



*Oak Creek*

CITY  
ADMINISTRATOR

June 10, 2003

Mr. Jeff Kitsembel  
Case Coordinator  
Public Service Commission of Wisconsin  
P.O. Box 7854  
Madison, WI 53707-7854

Subject: Response to Draft Environmental Impact Statement  
Elm Road Generating Station (Docket No. 05-CE-130)

Dear Mr. Kitsembel:

On behalf of the City of Oak Creek, RMT has reviewed the April 2003 Draft Environmental Impact Statement (DEIS) prepared by the Public Service Commission staff for the Wisconsin Energy Corporation's (WEC) Certificate of Public Convenience and Necessity (CPCN) application for construction of three large electric generating facilities to be located within, and adjacent to, the City of Oak Creek (PSC Docket No. 05-CE-130, the "Elm Road Project").

Your staff and the Department of Natural Resources (DNR) staff should be commended for digesting and clearly presenting the details of such a complex development.

Our comments to that document are attached in a separate document. They include input provided by Kamperman and Associates on noise issues, and Christensen Associates on financial issues. In general, our comments focus on the issues in common with the Conditional Use Permit (CUP) approved by the Oak Creek Common Council on June 3, 2003 (attached) and the Development Agreement signed by the City and WEC on April 3, 2003. Other issues are also presented for your consideration.

The City requests that the PSC consider each of the items outlined above for consideration in preparation of the final EIS. Ultimately, the City wants the CUP and April 3, 2003 Development Agreement with WEC included in the CPCN as conditions, if the Oak Creek site is selected for development.

Sincerely,

Robert L. Kufrin  
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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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Application of Wisconsin Electric Power Company; Wisconsin Energy Corporation; and W.E. Power, LLC; for a Certificate of Public Convenience and Necessity for Construction of Three Large Electric Generation Facilities, the Elm Road Generating Station, and Associated High Voltage Transmission Interconnection Facilities to be Located in Milwaukee and Racine Counties

05-CE-130

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**COMMENTS OF CITY OF OAK CREEK ON DRAFT ENVIRONMENTAL IMPACT  
STATEMENT ON ELM ROAD GENERATING STATION**

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The City of Oak Creek, Wisconsin is the community in which We Energies' (a subsidiary of Wisconsin Energy Corporation (WEC)) existing 1,100 megawatt (MW) Oak Creek Power Plant (OCP) is located and in which it is proposed that the new facility, the Elm Road Generating Station (ERGS) would be constructed. The ERGS would consist of two super-critical pulverized coal (SCPC) units and one integrated gasification combined-cycle (IGCC) unit.

The City of Oak Creek (City) has about 30,000 residents. It is located in southeastern Milwaukee County on Lake Michigan. In addition to the existing OCP, the City includes large residential areas and retail, commercial and other industrial facilities.

The City, after extensive negotiations, entered into an Agreement dated April 3, 2003 with WEC. A copy of the Agreement has been submitted and received by the Commission as part of the CPCN application process. In addition, WEC has applied for rezoning of a portion of the Oak Creek property and a Conditional Use Permit (CUP). After meetings and negotiations with WEC's and City's representatives, a meeting with the Plan Commission and public meetings to elicit public concerns and comments, the rezoning and a CUP were unanimously

approved by the Plan Commission on May 13, 2003 and unanimously approved by the City Council on June 3, 2003. A copy of the Agreement and the ordinances approving the rezoning and CUP are attached.

The City's comments relate primarily to air emissions (including total emission limitation standards, enforcement mechanisms, air monitoring and reporting requirements), environmental and economic impacts (caused by the construction and operation of the proposed ERGS and community mitigation payments to partially offset or reduce these impacts), other community impacts (including inter alia plan approvals, grading, fire protection, security, emergency medical services, noise, traffic and other matters covered by the City's CUP), and technical concerns.

## I. AIR EMISSIONS

### A. General Comments on the Air Quality Impact Analysis

The Air Quality Impact Analysis is based upon the overly conservative methods used to account for (or in effect double count) existing background concentrations and for the total lack of consideration of We Energies Multi-Plant Environmental Cooperative Agreement, the conditions in the City's April 3, 2003 Agreement with WEC, and the proposed EPA Consent Decree. The air quality impact analysis in the Draft Environmental Impact Statement (DEIS) fails to quantify the potential for significant improvements in air quality in southeast Wisconsin that may result from the proposed project and the above related initiatives, particularly if the new units are approved and dispatched ahead of the existing units.

### B. Impact of Agreements

On September 30, 2002, We Energies and the DNR signed a Multi-Plant Environmental Cooperative Agreement, tied to other approvals for this project, that would require We Energies to make system-wide emission reductions at its then-existing coal fired plants of over 50 percent.

Then, on March 31, 2003, the Oak Creek Common Council approved an Agreement with WEC, which was fully executed on April 3, 2003, that will limit total emissions from the combination of new and existing generating units to calendar year 2000 levels (38,400 tons per year) beginning immediately for the following selected air pollutants: sulfur dioxide, nitrogen oxides, particulate matter, mercury, volatile organic compounds, hydrogen fluoride, hydrogen chloride, and sulfuric acid mist. This list represents the air pollutants of primary concern with respect to potential health impacts. Finally, in its proposed Consent Decree with We Energies (April 29, 2003), the EPA has included this same provision, only starting at a later date. The proposed Consent Decree will require We Energies to make further emission reductions beginning in 2013.

Even without these agreements, air quality improvements are probable if the project is approved and if the new units are dispatched ahead of the existing units (dependent of course on the total output from the Oak Creek and Elm Road stations). It is certain that emission reductions and air quality improvements will be realized if the new units displace generation currently provided by existing units because the emission rates per Megawatt-hour of electrical energy provided by the proposed units will be lower than emissions rates for the existing units.

The Environmental Impact Statement does not, but should, contain an evaluation of the impacts of potential scenarios based on the Agreement with the City, the proposed Consent Decree, and potential dispatch of new units ahead of the existing units. To illustrate the potential for improved air quality if the project is approved, the following table compares the emission rates from the generating units contained in the air quality impact analysis discussed in the DEIS, emission rates required under the Oak Creek Agreement, and emission that would result under the proposed EPA Consent Decree.

<b>Pollutant</b>	<b>DEIS <sup>1</sup> (Tons/Yr)</b>	<b>Oak Creek Agreement <sup>2</sup> (Tons/Yr)</b>	<b>EPA Consent Decree (Proposed) <sup>3</sup> (Tons/Yr)</b>
Sulfur dioxide	162,169	24,900	14,540
Nitrogen oxides	20,530	12,000	9,022
Particulate Matter	7,088	770	2,603

**Footnotes:**

- (1) Of these figures, emissions from existing units are 152,340 tons (93.9%) of sulfur dioxide, 15,173 tons (73.9%) of nitrogen oxides, and 5,905 tons (83.3%) of particulate matter.
- (2) The Agreement limits total emissions to 38,400 tons per year as stated above. The figures in the table are based upon calendar year 2000 Actual Emission Rates.
- (3) Assumes 100% Capacity Factors

Based on the annual limitations in the Oak Creek Agreement and the proposed EPA Consent Decree, if one assumes the hourly emission rates used in the air quality analysis for the DEIS, the facility could only operate for 1,170 hours per year or 680 hours per year, respectively. Clearly, for a base-load power plant these would be an unrealistic operating schedule.

**C. Inaccuracies in the Impact Assessment**

We believe the general description of the processes used to assess impacts to existing air quality to be misleading. The presumed existing air quality in the region is based upon ambient air monitoring conducted at significant distances from the proposed project site, in environments very different than found in Oak Creek and Caledonia. For example, the agencies rely upon data collected at the following monitoring sites to characterize the existing ambient air quality:

<b>Pollutant</b>	<b>Monitoring Site Used to Characterize Milwaukee County</b>	<b>Monitoring Site Used to Characterize Racine County</b>	<b>Distance to the Proposed Elm Road Generating Station</b>
SO <sub>2</sub>	MATC downtown 739 West Juneau Milwaukee	Green Bay East H.S. 1415 East Walnut Brown County	15 miles to MATC; 135 miles to Green Bay
TSP	Franklin Pumping Station 5800 West Alwood Franklin	Franklin Pumping Station 5800 West Alwood, Franklin	9 miles

PM <sub>10</sub>	Great Lakes Water Institute 600 East Greenfield Milwaukee	Great Lakes Water Institute 600 East Greenfield, Milwaukee	13 miles
NO <sub>x</sub>	UWM 2114 East Kenwood Milwaukee	Harrington Beach 531 Highway D, Ozaukee County	16 miles to UWM; 44 miles to Harrington Beach
CO	MATC downtown 739 West Juneau Milwaukee	MATC downtown 739 West Juneau Milwaukee	15 miles

The MATC downtown site, used to establish the existing air quality in Milwaukee County for sulfur dioxide and carbon monoxide, and Racine County for carbon monoxide, is heavily influenced by vehicle traffic and its high-density urban characteristics. Likewise, the UWM site used to establish existing conditions in Milwaukee County for nitrogen oxides (NO<sub>x</sub>) is influenced by its intra-urban setting and local vehicle traffic. The Franklin Pumping Station site used to establish existing conditions for total suspended particulate matter is influenced by nearby quarrying operations. The monitoring site at the Great Lakes Water Institute used to establish existing conditions for inhalable particulate matter (PM<sub>10</sub>), is heavily influenced by its intra-urban location and activities associated with the port of Milwaukee. For these reasons, the monitoring stations used to characterize the existing air quality are not appropriate for the proposed project site. At the very least, the background concentrations from these stations likely overestimate the true background concentration in the proposed projects worst-case impact areas. At worst, they grossly mischaracterize and invalidate the air quality assessment.

The agencies further characterize existing regional concentrations of air pollutants based on a five-year arithmetic average (in this case for the 5-year period of 1995-1999) of the second highest values occurring each year, to compute a background concentration for pollutants with short term (3-hour, 8-hour, 24-hour) National Ambient Air Quality Standards (NAAQS). This

background concentration is then assumed to occur all of the time, without regard to wind direction. For pollutants with annual standards, the five-year average of the annual concentrations are assumed to characterize existing conditions. This method biases the resulting background concentration on the high side. In this particular case, it leads to a conclusion that future air quality will approach unacceptable levels. While such an analysis may be appropriate for the DNR's regulatory purposes, such a conservative analysis should be made clear to the general public. It should also be made clear to the general public that this conclusion (regarding potential air quality approaching unacceptable levels) is the result, not of expected emissions from the proposed units, but because of the emission rates assumed for the existing units, which in lieu of the aforementioned agreements, are unrealistically high.

The method for evaluating worst-case air quality impacts due to proposed and (especially) existing emission sources is too conservative in that the procedure can double-count the impact of the existing sources at the existing OCPP by first having them directly in the model as an emission source (and assuming them to be operated at continuous 100% load conditions) and, secondly, by assuming that emissions from the existing sources contributed nothing to the presumed existing background concentrations.

Specifically, in the air quality analysis, existing OCPP units 5 through 9 have been assigned a total emission rate in excess of 152,340 tons per year. Actual emissions from the existing units, as reported in the EPA's Clean Air Markets web site, were only 24,887.5 tons in calendar year 2000, less than one-sixth of the emission rate used in the air quality impact analysis. Further, the proposed "new" units were assumed to add approximately 9,832 tons of sulfur dioxide emissions per year, just 6.1 percent of the emissions contained in the modeling study.

A statement is made in the DEIS that the concentrations of sulfur dioxide (3-hour and 8-hour) would “increase dramatically” if the new units were approved. Such a statement is inaccurate as it fails to recognize that the majority of the modeled impacts are due to the assumed and unrealistically high emission rates from the existing units, not the proposed new units, coupled with the assumption that the existing units do not contribute to background concentrations.

In reality, if all agreements and restrictions regarding the existing units were taken into account, an analysis could be presented in the DEIS that, realistically, leads to a conclusion that if the new units are approved and dispatched ahead of the existing units, substantial improvements in air quality would result.

It is also important to note that for most pollutants and averaging times, the highest concentrations reportedly occur when winds are off Lake Michigan. Even under these conditions, a background concentration is added to the modeled result, even though there are no upwind sources for over 75 miles. This practice again biases the reported results to a higher concentration than can reasonably be predicted given the proposed project location.

D. Minimization of Particulate Impacts

The PM<sub>10</sub> (24-hour) and TSP (24-hour) impacts as determined by the modeling studies, approach the limits of acceptability at nearly 100 percent of health and welfare based standards. These impacts are highly dependent on location of the various fugitive dust sources, including coal storage piles, roadways, etc. These impacts can be reduced by strategic placement of such features, away from site boundaries, toward the interior of the site. It is appropriate to minimize human exposure to these air contaminants even though other environmental impacts may increase. This is why the City’s CUP has required that the coal storage and handling facilities be moved within the rail spur loop, approximately 2,000 feet southeast of the intersection of Elm



Road and the railroad tracks. This revision to the site layout will mitigate potential impacts to the residents of the Oakview #3 and Barton Oaks subdivisions as demonstrated by revised air quality modeling. Moving the coal storage inside the rail loop results in nearly a 10 percent reduction in predicted TSP impacts.

E. Enforcement Mechanism

The Oak Creek Agreement provides for specific enforcement provisions (see Agreement ¶ 1.D). In addition, the incorporation of the total air emission limitation standards in the proposed U.S. v. WEPCO consent decree, upon approval by the U.S. District Court for the Eastern District of Wisconsin, also makes federal enforcement available including civil penalties, injunctive and contempt relief.

F. Air Monitoring and Reporting Requirements

In addition to the generally applicable federal and state emission discharge reporting requirements, the Oak Creek Agreement requires the installation and operation of two critical air monitoring stations at the Elm Road Monitoring Site and at the Carrollton Monitoring site in the community which, based on air modeling, will measure emissions in the community (and not at points 9 to 135 miles away and subject to potential other sources.) (See Agreement at ¶ 1.E. 1.&2.). The Agreement also requires that the air emission monitoring results be reported to the City of Oak Creek as well as DNR. (See Agreement at ¶ 1.E.3).

Further, the proposed WEPCO consent decree will require air emission monitoring and reporting (See Consent Decree, § § V.E., VI.E., VII.C. and XII.)

G. Air Summary

Finally, it should be noted that the air quality impacts are the most important of all environmental issues related to this project. They have the greatest potential to impact public health and welfare, as well as public opinion regarding the entire development. It is in the best

interest of all parties involved that the presentation of the air impacts reflect, as accurately as possible, the existing and expected conditions at the site. We suggest that the PSC and DNR take a closer look at the information presented in the DEIS; review the latest DNR, City, and EPA agreements; and make a more realistic presentation of these conditions in the final EIS.

## II. ENVIRONMENTAL AND ECONOMIC IMPACTS

### A. Scope of ERGS Project

The proposed ERGS project will result in the construction and operation of the sixth largest electric generating facility in North America in the Oak Creek community of about 30,000 residents. The construction project will take 8 years from 2004 to 2011 including construction 24 hours per day, 7 days a week. It is estimated that over 10 million cubic yards of soil will be excavated and graded. It is further estimated that this will be the largest construction project in Wisconsin dwarfing the construction of Miller Park or the Milwaukee freeway system. At peak, there will be about 1,200 workers employed in the construction and there will be about 2,780 vehicle trips per day into and out of the site. In addition, there will be numerous rail and barge deliveries to the site during the construction period.

The new and existing facilities will be located on prime high value lake front property. The presence and size of the facility impacts planned redevelopment activity in the eastern portion of the City and stints local property tax base growth in a prime area of the City. There will be substantial impacts on the City's services including among others, it's firefighting, paramedics, emergency medical services, police, water, sewerage treatment, engineering and building inspection, traffic, roads, public works maintenance and service. City residents during the 8 years of construction will be subjected to substantial traffic and noise impacts.

Unlike all other residential and business property owners in Oak Creek, WEC's OCPP and ERGS, are exempt from real estate property taxes that fund the costs of City government

and services. Even though WEC follows current law, it cannot pay a fair and equitable share of local real estate property taxes under current law. The compensation to the City of Oak Creek under the public utility distribution of shared revenue for an additional 1,830 MW of new coal power will increase only \$6,000 annually from current payments to the City to the maximum of \$750,000. This amount can only be seen as miniscule when viewed in light of the overall impact to the community. The \$750,000 payment represents only about:

- 0.07% of the revenues We Energies may earn from the proposed power plants,
- 0.4% of the return on equity that may be earned by We Power,
- 2.6% of the revenue that may be collected by the State of Wisconsin, and
- 5.3% of the value of property tax revenues that might be collected if the proposed power plants were not exempt from property taxes.

The compensation provided by current state law to a municipality hosting a power plant is extremely low when compared to revenue streams captured by others. The level of compensation is also low when considering the impacts of construction and operation borne by the host community. A more equitable compensation for host communities would be to provide revenues similar to what any other industrial facility would provide for an equivalent development.

In the case of Oak Creek, tax revenues for an equivalent industrial facility to that proposed would conservatively generate \$14,000,000 annually, including the standard manufacturers and equipment exemptions in Wisconsin tax code M-P and M-R. Of this \$14,000,000 in property taxes annually, about \$10,000,000 would be for local purposes including municipal government, water and sewer and local schools. The Agreement between the City and WEC provides a maximum payment of \$2,500,000 annually, if all three new units are built. Adding this to the expected \$750,000 from shared revenues provides a total compensation of \$3,250,000 annually, if all three proposed units are built. Even taken together,

this compensation to the City represents only about one-third of the foregone property tax revenues. Furthermore, a payment of \$2,500,000 to the City would impact a 400 kWh residential rate-payer by adding only about \$0.48 annually in electric costs. For keeping the largest construction project ever in the state, and the 6<sup>th</sup> largest power plant in North America out of other rate-payers “back yards”, this level of compensation more than passes any reasonableness test.

The inadequacy of payments to host communities has been under review by many interested parties for the past few years. The current legislature is considering changes to the shared revenues formulas that recognize the disparity between what payments the host community receives and the impacts felt by hosting a large power plant. The City has been following this legislation closely and would like to highlight some notable differences between payments to the host community in the form of utility payments under the shared revenue formulas and payments to the host community under the Agreement between the City and We Energies. In particular, the City would like to stress the long-term nature of any decision to build the proposed power plants. If the proposed plants are built, the City will experience the impacts of these plants for at least the next 40 years and perhaps longer. In this context, it is important to understand that the outcome of any changes to utility shared revenue is uncertain at this time and any changes that might occur will continue only at the discretion of the legislature and the governor. As a result, even if new legislation does provide additional compensation from shared revenues to host communities, this compensation could be reduced by future legislatures. Thus, the size of future payments under shared revenue formulas are subject to much uncertainty. While the City believes that this additional compensation does not represent unreasonable compensation for agreeing to live with the proposed plants for at least the next forty years, it is

not at all certain at what level this compensation will occur or even that it will continue for the life of the proposed plant. Finally, the City would note that because the proposed legislation does not change the gross revenues tax on electricity production, any additional payments arising from the proposed changes to shared revenue are unlikely to affect We Energies' rate payers.

This massive base load electric generating facility will provide electrical power to WEC's more than one million customers,<sup>1</sup> as well as providing power to other utility customers outside the WEC service territory. Residents and business customers in Oak Creek will use about 3% of the electric power generated,<sup>2</sup> but the City, its residents and businesses will suffer the construction impacts and the impacts during the more than 40 years of operation of the facility.

Most significantly, all of WEC's rate payers will benefit from the enormous capital and operations savings from the siting of the plant in Oak Creek as compared to other sites such as in Pleasant Prairie, Haven or Milwaukee.

#### B. Property Values

The DEIS (at p. 296-98) briefly discusses impacts on property values in the City of Oak Creek and the Town of Caledonia and the author's opinions of several hedonic studies. The City respectfully disagrees. With respect to this strawman argument, first, it must be noted that impacts on property values are only one of the substantial impacts sustained by the City. Second, the City respectfully disagrees with the authors' opinions and interpretations of the economic studies.

#### C. Mitigation Payment

Subject to Commission approval, the Oak Creek Agreement provides that WEC will make an annual payment to the City if one unit is approved of \$1,500,000; an additional

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<sup>1</sup> From WEC's website.

<sup>2</sup> Estimate based on 30,000 residents = 10,000 residences and 5kW required per household, including all home, and business uses of those households.

\$750,000 if a second unit is approved; and an additional payment of \$250,000 if a third unit is approved. (See Agreement ¶ 3). If approved by the Commission, this amount of the mitigation payment is independent of any increase or decrease in the public utility distribution of shared revenues.

The DEIS suggests (page 29) that “Whether these payments should be recovered and what is an appropriate level may be key issues at hearing in the case”. The City suggests that there should be no doubt that these mitigation payments should be recovered and that they are at least appropriate in this case because of the magnitude of the impact to the community and insignificance of the amount affecting the rate-payer.

### III. OTHER COMMUNITY IMPACTS

#### A. Rezoning and CUP Process

As noted above, WEC applied to the City of Oak Creek for rezoning and a CUP. After review by City staff and meetings and negotiations between WEC and City representatives, a meeting and presentation to the Plan Commission, public meetings and a public hearing to elicit community concerns and impacts, the Plan Commission and the Common Council on behalf of the City, exercising its municipal police powers unanimously approved the rezoning and a CUP on June 3, 2003. A copy of the rezoning and CUP ordinances are attached hereto.

#### B. Matters Covered by Rezoning and the CUP.

The rezoning allows the property to be used for power plant development. CUP seeks to address City responsibilities under statutes or ordinances, community concerns, and seeks to lessen, or reduce, where possible, impacts on the community. Among other things the CUP addresses land use, plan approvals, fire protection, security, emergency medical services, grading, buildings and set backs, construction hours, water, sewer, signage, traffic and

roadways, noise during operation and construction, inspections, lighting, and coal storage and handling.

C. Noise During Operations.

Besides air emission impacts, the most significant environmental impact issue for the City is noise. Kamperman and Associates and Hessler and Associates provided substantial input to the City and WEC, respectively, on this issue. Many discussions on this topic primarily centered on whether or not industrial or residential standards should be used during the operations period. Standards are set in the CUP.

D. Noises During Construction

The DEIS acknowledged that the Commission staff did not evaluate noise impacts during construction because WEC did not present sufficient data on the topic in its application. The City recognized this shortcoming and addressed this with WEC as part of the CUP. Setting noise levels during construction projects is not typical. However, the magnitude and duration of this project necessitate some responsible and reasonable regulation in this regard. The CUP addresses this by requiring noise monitoring stations consisting of automatic data recorders at strategic locations to measure noise levels on a continuous basis, and setting noise levels for construction periods that are protective of the Barton Oaks and Oakview #3 residents, yet allow flexibility for construction of the site.

The key issue during construction is limiting the areas of construction, times of construction, and setting noise limits before and after the screening berms are constructed. The CUP establishes limits, where appropriate, to protect the residents during the most sensitive times of the day and year and days of the week, while providing WEC the flexibility to construct the screening berms as quickly as possible to minimize noise impacts during the majority of the

construction period. Standards become more restrictive as the project progresses and the major earthwork ends.

The data recording requirements, compliance protocols, and penalties for non-compliance are established to provide the City daily access to noise level measurements for quick detection, response, and resolution of noise exceedances, if they occur.

#### IV. TECHNICAL CONCERNS

In addition, there are a number of specific technical concerns with the DEIS.

##### A. Specific Comments

On page 28, the text reads:

5. WEPCO will work with the city on a conditional use permit basis to minimize noise and traffic issues.

The CUP was never limited to noise and traffic issues. The text should be modified to reflect that the CUP is used to address all City concerns, not just noise and traffic.

On page 35, it appears in the paragraph following figure 3-5 that the agency is attributing the reduction in kWh production in 1997, for WEPCO generating units built after 1960, to the extended outage at the Kewaunee nuclear plant. The statements should be clarified to indicate that the state-wide reduction that occurred in 1997 is attributable to the extended outages at the Point Beach and Kewaunee nuclear plants.

On page 43, (Planned capacity retirements and nuclear relicensing) it should be noted that Oak Creek Units 1 through 4 have already been retired. The final EIS should identify the unit that commission staff assumed to be retired in 2019. Additional considerations should be made for the potential that Units 5 and 6 may be retired before 2013, a possibility in light of the proposed EPA Consent Decree. Commission staff further speculated that Units 1 and 2 at the Point Beach Nuclear Power Plant would be successfully re-licensed. These assumptions have



significant impacts on the Needs analysis and should be re-examined. All potential options, the retirement of one or both of OCPP Units 5 or 6, along with the potential that one or both of Point Beach units are retired before 2013, should be considered, and a strategy should be formulated to address each of these options.

On page 60, the text fails to mention that gas-fired power plants also emit sulfur dioxide, volatile organic compounds, heavy metals (including mercury), and organic hazardous air pollutants including formaldehyde.

On page 94, it should be noted that natural gas transmission and distribution also relies on compression provided by fossil fuel fired engines.

On page 95, it should be noted that the City of Oak Creek considers cooling towers to be unacceptable due to the visual impact. Cooling towers would further adversely impact the heat rate of the plant, resulting in even greater emission rates assuming the net output remains constant.

On page 95, under Air Emissions, the following statement is made:

Mercury is not a pollutant emitted by natural gas combustion.

This statement contradicts information published by the EPA and statements made elsewhere in the DEIS. In its publication, Compilation of Air Pollutant Emission Factors, AP-42, Fifth Edition, Volume I: Stationary Point and Area Sources, (Table 1.4-4), the EPA reports that natural gas combustion emits  $2.6 \times 10^{-4}$  pounds of mercury per million cubic feet of natural gas combusted. Using this emission factor, a natural gas fired combined cycle plant with a heat rate of 7,800 Btu per kW-hr, generating 1,830 MW, could emit over 32 pounds of mercury per year.

Pages 117 and 239, and others refer to a wallboard plant. The final EIS should reflect that the wallboard facility is not considered part of the power generating facilities and, if located

in the City, will therefore require separate approvals and be taxed by the City like any other industrial or commercial operation.

Beginning on page 134, there are discussions of potential health impacts due to exposure to air contaminants emitted by coal fired power plants. These same air contaminants are emitted by virtually all combustion processes, including combustion of petroleum products (fuel oil and gasoline) as well as combustion of natural gas. Several additional points should be made in these sections:

- For the physical responses described, there must be exposure to unhealthy concentrations of the air contaminants.
- For particulate matter, it should be noted that all of Wisconsin has been tentatively classified as meeting the PM<sub>2.5</sub> standard.
- For nitrogen oxides, the national ambient air quality standard of 100 micrograms per cubic meter of air (annual average) should be mentioned.
- For nitrogen oxides, a figure of 0.1 ppm of air is mentioned as causing lung irritations and measurable decreases in lung function in asthmatics. However, no mention of whether such concentrations are expected as a result of the ERGS project could be found.
- For sulfur dioxide, no mention of the sulfur content in natural gas or commercial grades of propane was provided, as it was for coal and oil. Natural gas, after sweetening, contains as much as 20 grains of sulfur per 100 standard cubic feet.
- For sulfur dioxide, various health impacts are discussed, but no concentrations are provided that are correlated with these health impacts, and no mention is made of whether such concentrations are expected as a result of the ERGS project.

For greenhouse gases, it is important to identify the other sources of greenhouse gas emissions in Wisconsin. If electric utilities generate 33 percent of the greenhouse gases emitted in Wisconsin, what are the sources of the remaining 67 percent?

There is no mention of the system-wide reductions in emissions of mercury, sulfur dioxide, and nitrogen oxides, of over 50 percent from calendar year 2000 levels from the coal fired plants in the We Energies system that will be required under the Multi-Plant Environmental

Cooperative Agreement between We Energies and the DNR, if the PSC approves the ERGS proposal.

On page 148, a possible interpretation of the text is that the IGCC unit will not be subject to Section 112(g) of the Clean Air Act because such units are not identified by EPA as a source category that will be regulated under Section 112(c). Such an interpretation would appear to contradict guidance from EPA as found on its web site

<http://www.epa.gov/ttn/atw/112g/qanda12g.html>) as presented below:

Q1 Is this rule applicable only to sources in the source category list developed under 112(c)?

A1 No. This rule applies to all new major sources of HAP (hazardous air pollutants) even if they are not yet on the source category list. This list contains the source categories for which EPA is to promulgate MACT standards. (The Clean Air Act requires EPA to list all categories of major sources of HAP. If it is brought to the EPA's attention that a category has not yet been listed, the EPA must then list it, unless the category is regulated under section 129 (see also #3 below)). The exception to this are source categories that were deleted from the list pursuant to 112(c)(9). See 40 CFR 63.40(e) or 61 FR 68399.

On page 153, under the Existing Air Quality section, the following statement appears:

“Both counties (Milwaukee and Racine) are classified as moderate non-attainment for ozone.”

This statement is incorrect. Both counties are classified as severe non-attainment for ozone.

In Table 7-6 (page 153) the background concentration for SO<sub>2</sub> (24-hour) is stated as 7.8 micrograms per cubic meter. The correct figure is 57.8.

In Table 7-11 (page 157) there is no limit under the column for “Proposed Limit” for sulfuric acid mist, only units of Lb/mmBtu with a reference to a 12-month rolling average. An appropriate figure should be provided.

Also in Table 7-11, for VOC, there is reference to Note 4, which indicates this limit is based on a 96 percent reduction in the emission rate of the design bituminous coal. Does this note belong here or with sulfur dioxide?

In Tables 7-11 through 7-15, the term “LAER” appears in the table heading in the column “Proposed Limit (LAER)”. Are these intended as LAER requirements?

On page 169 (Federal Acid Rain Program), the following statement appears:

In order to operate, the ERGS would be required to buy allowances from another power plant that has reduced its emissions below the allowances allocated.

The OCPP currently has allocations totaling 30,506 allowances, more than enough allowances for its existing generating units and the ERGS units under the Agreement with the City of Oak Creek and the proposed EPA Consent Decree.

On page 170, further explanation of the NR 445 exemption for fuel ash should be provided. Should the reference to section NR 400.02(22e) instead be to NR 400.02(40)? The exemption in NR 445 applies only to “virgin fossil fuels” further defined as having a heat value of greater than 7,000 Btu per pound, which is not blended with reprocessed or recycled fuels. Does the fuel ash have a heat content of greater than 7,000 Btu per pound? Is the fuel ash a reprocessed or recycled fuel?

In Table 7-33, mercury emissions are erroneously stated as 0.962 tons from SCPC Units 1 and 2. The correct figure is 0.062 tons for each unit.

On page 175, under “Chapter Summary,” the conclusions fail to recognize that fabric filtration is also effective to control particulate matter, including the PM<sub>10</sub> fraction. Also, the following statement is made:

Under WEPCO’s modeling analysis, concentrations of particulate matter, especially total suspended particulates (TSP 24-hour), PM<sub>10</sub> (24-hour), and SO<sub>2</sub> (both 3-hour and 24-hour) would increase substantially due to operation of the

ERGS. Several of these pollutant concentrations are approaching 100 percent of the National Ambient Air Quality standard for the region.

This statement is inaccurate as it fails to differentiate between impacts due to the existing units and impacts due to the proposed ERGS project, treating impacts from both as if they result only from the ERGS project.

On page 175, the DNR cites ACGIH (2001) as the reference for determining an acceptable concentration in ambient air. The applicable provisions of NR 445 cite the threshold limit values and biological exposure indices for 1987 – 1988, which were published by the American Conference of Governmental Industrial Hygienists. The correct version should be referenced in making a comparison to acceptable concentrations in air. Additionally, in NR 445, ammonia is not identified as having a ceiling limit, and therefore, comparison of a one-hour average concentration in ambient air to ten percent of the ACGIH value is not appropriate.

On page 256, the topographic changes to the North Site should be modified to include the requirements in the CUP for the berms listed in the CUP. Figure Vol. 2-12, and possibly others, should be edited to reflect the configuration of the berms outlined in the CUP.

Starting on page 277, Chapter 11 - Community Impacts, fails to mention anything about the loss of taxable property that a power plant takes from the host municipality. This is a real impact to the community that should be discussed. As noted in the example above, the value of the lost tax revenue to the City if the proposed plant was a similarity priced industrial facility would be millions of dollars annually.

On page 285, under “Land Use Plans” it should be noted that on June 3, 2003, the Oak Creek Common Council approved a CUP for the property in Oak Creek.

The “Zoning” section beginning on page 290 should be updated to reflect that on June 3, 2003, the Oak Creek portion of the WEC property was rezoned and a CUP approved to allow power plant development. (See attached zoning ordinance.)

Page 293 should be updated to include a reference to the CUP indicating the water and sewer use have been agreed to for construction and operation of the plant in Oak Creek. If the ERGS is approved for the Town of Caledonia location, another source of water and sewer is needed.

On page 294, (Fire protection and emergency medical service), it is incorrect to imply that the Oak Creek Fire Department would serve any units as a first responder for any incidents occurring outside the borders of the City. The City will provide first response services only to facilities located within the City. If the new facilities are located in the Town of Caledonia, it and Racine County will receive shared revenues under current law, and should be expected to provide such services.

On Page 295, the \$117.3 million figure incorrectly referenced the “net book value of the OCPP.” The \$117.3 million figure actually includes:

- 1) Production plant assets valued at \$99,175,541;
- 2) Substation assets valued at \$17,908,476;
- 3) General structures valued at \$126,474.

For a total of \$117,210,491. Thus, the value of the OCPP for shared revenue purposes is overvalued by \$18.1 million.

On page 296, it should be noted that a 30-year depreciation schedule as compared to a 40-year schedule has significant negative financial impacts on local residents under the current

shared revenue program. It should be further noted that the current shared revenue program has a questionable future, and payments to local communities in lieu of taxes cannot be assured.

Also on page 296, the City takes issue with the statement that the property value advantages cited in the DEIS (“natural visual buffers and a feeling of space” and “a recreational trail”) are real or even perceived advantages given that the trade-off is a location adjacent to a power plant. Potential buyers and sellers are aware of the proximity to the existing plant based on inquiries that the City has received, and these potential buyers and sellers have expressed concerns about the proposed development. The statements made here suggest that with all else being equal, given the choice of locations, that people will choose to live in this location. Unless this statement can be substantiated, the statement should be removed from the final document. Further, while one may be proposed, no recreational trail currently exists on the site.

On page 300 under “Fugitive Dust,” the City’s concerns with the potential for fugitive dust sources during construction and operation have resulted in the City’s Agreement with WEC including a requirement for WEC to operate an ambient air quality monitoring station in the vicinity of Elm Road and Haas Park. This station is currently under development and will contain sampling equipment to monitor total suspended particulate matter (TSP) on a daily basis, and continuously monitor PM<sub>10</sub> and PM<sub>2.5</sub>. Corrective actions and possible enforcement will be taken if exceedances resulting from operations conducted by WEC are indicated.

Starting on page 303, “Reserve Coal Pile” should be amended to address the City requirement in the CUP to move the pile south, within the rail spur loop.

Starting on page 306, the “Traffic” section needs to be updated to reflect the changes in the CUP if the North Site is selected.

On page 319, it should be noted that Oak Creek does have an existing noise ordinance with a specific noise level threshold for industrial sources (Section 17.0810 of the Zoning Code), setting a limit of 62 dbA at the boundaries of Business Districts, and 58 dbA at the boundaries of Residential Districts. The recently adopted CUP sets additional restrictions on noise levels from the property and requires monitoring to demonstrate compliance with those limits. It also regulates all noise from the property, not just construction traffic impacts.

On page 328, the “Earth Moving” section should be updated to reflect the changes in the grading and berms outlined in the CUP which are to be developed if the North Site is selected for the ERGS plant.

The “Recreation” section on page 329 should be amended to include a discussion of the impact of increased barge traffic on the recreational use of Lake Michigan. The CUP includes a requirement to provide the City a report on this issue and work with the City to mitigate any impacts.

## V. CONCLUSION

The City of Oak Creek respectfully requests that the PSC and DNR staff consider each of the items outlined above for consideration and inclusion in the final EIS.

If you have any questions regarding the details discussed above, please contact the City’s legal and/or technical consultants.





Oak Creek

CITY  
ADMINISTRATOR

WISCONSIN PUBLIC SERVICE  
COMMISSION

2003 JUN -5 P 1:37

June 4, 2003

RECEIVED

Ms. Linda L. Dorr  
Secretary to the Commission  
Public Service Commission of Wisconsin  
610 North Whitney Way  
P.O.B. 7854  
Madison, WI 53707-7854

Dear Ms. Dorr:

On March 31, 2003, the City of Oak Creek and We Energies entered into a development agreement regarding the construction of the Elm Road Generating Station Docket No. 05-CE-130. The Public Service Commission had previously received a copy and referenced the agreement in the Draft Environmental Impact Statement on page 28 and 29, which was released on April 21, 2003. On page xxii of the DEIS the staff explained that the agreement had been approved and discussed the community mitigation payments including a footnote reference.

A copy of the agreement is again attached for inclusion as part of the application process. We are filing 30 copies with this letter.

Sincerely,

Robert L. Kufin  
City Administrator

8640 S. HOWELL AVE.  
OAK CREEK, WI 53154  
TEL (414) 768-6504  
FAX (414) 768-9587

## AGREEMENT

WISCONSIN PUBLIC SERVICE  
COMMISSION

THIS AGREEMENT is made and effective as of the 2 day of April, 2003, by and between the City of Oak Creek (the "City") and Wisconsin Energy Corporation, ("WEC"), on behalf of its subsidiaries, Wisconsin Electric Power Company ("Wisconsin Electric"), W.E. Power, LLC ("We Power"), WISPARK LLC ("WISPARK"), and Wisconsin Gas Company ("Wisconsin Gas") (collectively referred to as the "Subsidiaries").

### WITNESSETH:

WHEREAS, WEC or one of the Subsidiaries is the current owner and operator of coal-based electric generating facilities located in the City.

WHEREAS, WEC desires, as a part of its "Power the Future" project for increasing electric generating facilities, to create three coal burning new electric generating facilities at the site of existing facilities in the City.

WHEREAS, it is anticipated that the construction and operation of the new facilities may have certain effects on the City.

WHEREAS, in order to mitigate any such effects on the City, WEC and the City desire to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WEC, for itself and the Subsidiaries, and the City agree as follows:

#### 1. AGREEMENT CONCERNING AIR QUALITY ISSUES.

- A. Purpose. The purpose of this paragraph 1 is to ensure that effective upon the date of this Agreement, the total actual annual air emissions from Oak Creek Units 5-8 ("Existing Facilities") and Elm Road Units 1-3 ("New Facilities") will not result in a net increase of the total actual annual air emissions as compared with the baseline condition. The parties recognize that the air pollution requirements established and implemented by the Wisconsin Department of Natural Resources "DNR" are designed to protect public health and welfare and that this Agreement is in furtherance of and not in conflict with those state requirements.
- B. Baseline Emission Level. For the purpose of establishing that there will be no net increase in total actual annual air emissions, WEC has used calendar year 2000 as the baseline condition, and determined that the baseline emission level from the facility is 38,400 tons per year ("Baseline Emission Level"). The Baseline Emission Level includes the actual annual air emissions in calendar year 2000 of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), particulate matter ("PM"), mercury ("Hg"), volatile organic compounds ("VOC"), hydrochloric acid ("HCl"), hydrofluoric acid ("HF"), and sulfuric acid ("H<sub>2</sub>SO<sub>4</sub>").

C. Measure of Compliance. WEC agrees that the total actual annual air emissions from the stacks of the Existing Facilities and New Facilities will not exceed the Baseline Emission Level. Compliance with the Baseline Emission Level will be measured on a rolling 12-month basis so that in each 12-month period the emissions shall not exceed the Baseline Emission Level.

D. Implementation and Enforcement.

1. WEC agrees that it will use all reasonable efforts to obtain enforceable limitations in the construction and operation air pollution control permit or equivalent order (state or federal) which includes emission limitations that will ensure that the total actual annual emissions from the Existing Facilities and New Facilities will not exceed the Baseline Emission Level ("Enforceable Permit Condition").

2. In the event for any reason the Department of Natural Resources or the U.S. Environmental Protection Agency does not include in the construction and operation air pollution control permit or equivalent order (state or federal) emission limitations that will ensure that the total actual emissions from the Existing Facilities and New Facilities will not exceed the Baseline Emission Level, the parties to this Agreement shall meet and agree to a local enforcement mechanism the validity and enforceability of which WEC agrees not to contest in any way.

E. Air Monitoring.

1. Elm Road Monitoring Site. WEC or its contractor agrees to install, maintain and operate an air monitoring station at a location to be mutually agreed upon between WEC and the City within 1200 feet of the intersection of Elm Road and the Chicago and Northwestern Railroad line to monitor for particulate matter measured as Total Suspended Particulates ("TSP"), PM<sub>10</sub> and PM<sub>2.5</sub> consistent with appropriate state and/or federal ambient air quality monitoring requirements except that the monitoring shall occur on a daily basis. Meteorological data including wind speed, wind direction and temperature shall also be collected at this location. The air monitors at this location shall be operational as soon as practicable, but no later than 150 days after the date of this Agreement and shall continue for a period of no less than two years after commencement of construction of the first of any of the New Facilities approved by the PSC. If after two years following

commencement of construction of the first of any of the New Facilities no exceedences of state or national ambient air quality standards attributable to any WEC operations are detected, the frequency of the monitoring can be reduced to a sampling frequency of once every three days for each of the above air pollutants. Monitoring shall continue thereafter unless the provisions of Paragraph E.4 apply.

2. Carrollton Monitoring Site. WEC or its contractor agrees to install, maintain and operate air monitoring station at Carrollton Elementary School (8965 South Carrollton Drive) to monitor for SO<sub>2</sub> and NO<sub>x</sub> consistent with appropriate state and/or federal ambient air quality monitoring requirements. Meteorological data including wind speed, wind direction and temperature shall also be collected at this location. The monitoring shall occur on a frequency consistent with state and/or federal ambient air quality monitoring requirements. The monitoring at this location shall be operational within 150 days of the granting of the CPCN for any of the New Facilities. Monitoring shall continue thereafter unless the provisions of Paragraph E.4 apply.
3. Data Reporting. The air emission and meteorological data from both of the monitoring sites under this paragraph shall be reported to the City after completion of QA/QC checks and shall be summarized in a quarterly report submitted to the City and DNR within 45 days after the end of the quarter. In addition to the Quarterly Report, the data shall also be available at the new Education and Visitors Center and City Hall as soon as practicable after the completion of QA/QC checks. It is anticipated that normal reporting time for PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> will be the first business day within 24 hours after completion of the QA/QC checks, but, in any event, no later than 4 days after the sample date. TSP results will be furnished within 30 days after completion of QA/QC checks.
4. Exceptions to Monitoring Requirements. The monitors shall continue to be operated and maintained until (a) all of the New Facilities authorized by PSC Docket No. 05-CE-130 have been built and have been in operation for a period of not less than five years, (b) the emission data indicates that the emissions and ambient air quality are within state and/or national ambient air quality standards, all applicable permit limits and the Baseline Emission Level of this Agreement for three consecutive years, and (c) the concentration of air pollutants are at or less than the maximum concentrations modeled as part of WEC air modeling calculations submitted with the air pollution control permit

applications for the New Facilities for three consecutive years. If the requirements of this sub-paragraph are satisfied, paragraph E will no longer apply. If none of the New Facilities sought in PSC Docket No. 05-CE-130 has been approved by the PSC for construction in Oak Creek, or if WEC does not proceed with construction of the New Facilities, then the requirements of paragraph E will no longer apply.

## 2. REDEVELOPMENT OF PROPERTY.

- A. Upon the signing of this Agreement and irrespective of whether WEC receives a CPCN from the PSC in docket #05-CE-130 for construction of any New Facilities, pursuant to Sec 196.491(3), Wis. Stats., WEC shall at its sole cost and expense: (a) complete a Market Study; (b) complete an Environmental Site Conditions Analysis; and (c) develop a Land Use Plan for certain parcels within the City of Oak Creek, which parcels shall be selected by mutual Agreement of the Director of Community Development and WEC. The Environmental Analysis, Market Study and Land Use Plan shall be completed within twelve months of the signing of this Agreement, and shared with the Director of Community Development as soon as they are completed. In the event WEC does not proceed to develop, under paragraph 2B, the parcels studied, then thirty copies of the Environmental Analysis, Market Study and Land Use Plan together with all supporting documents shall be provided to the City of Oak Creek. Notwithstanding anything to the contrary contained herein, WEC's obligations to provide the analysis, study, and plan under this paragraph 2A are contingent upon WEC obtaining all necessary consents and/or access from the owner(s) of the proposed property.
- B. For each of the first two New Facilities for which WEC receives a CPCN from the PSC in docket #05-CE-130, WEC shall be required to invest 10 million dollars, within ten years of the date of the granting of the CPCN by the PSC for each unit, to construct improvements of a type WEC deems appropriate on parcels within the City of Oak Creek, which WEC selects. WEC shall use its best efforts to invest such funds in as expeditious a manner as is reasonably prudent. For purposes of this Agreement, improvements include the following:
  - 1. Demolition of existing structures.
  - 2. Environmental remediation to the level necessary to construct and occupy the planned building(s), facility(s) and/or uses, in accordance with Wisconsin environmental statutes and Wisconsin Administrative Code Chapters NR 700 – NR 754 requirements and any federal environmental laws, regulations and guidance.
  - 3. Construction of improvements, including buildings and structures.

4. Installation of public improvements, including, but not limited to sanitary sewer, water main, storm water facilities, streets, including curb and gutter, street lights, landscaping and other amenities all of which shall be as defined under the Oak Creek Municipal Code.
  5. Marketing of properties until initial occupancy.
  6. Other improvements proposed by WEC and agreeable to the City.
  7. Acquiring all parcels necessary to undertake the aforementioned improvements.
3. PAYMENT OF MITIGATION COSTS. During the term (including any applicable extensions) of that certain Facility Lease (the "Facility Lease") between Elm Road Generating Station LLC and Wisconsin Electric for each unit of the New Facility (the "Lease Term"), We Power shall support, and shall use its best efforts to have approved, an annual mitigation payment to the City in the amount of \$1.5 million for the first unit (Elm Road Unit 1), \$750,000 for the second unit (Elm Road Unit 2), and \$250,000 for the third unit (Elm Road Unit 3), respectively (a "Mitigation Payment"). If, and to the extent, approved by the PSCW, Mitigation Payments will be made on a calendar year basis. The first Mitigation Payment for each unit shall be made thirty days after commencement of construction (commencement of construction shall mean the start of earth moving or excavation at the site) of a unit. Thereafter, Mitigation Payments shall be paid in one annual payment on June 30<sup>th</sup> each year during the Lease Term. Mitigation Payments for partial calendar years during the Lease Term (including the year of the first Mitigation Payment) shall be prorated on a per-diem basis. The obligation to pay Mitigation Payments is independent of the receipt of shared revenue funds from the State of Wisconsin and of any future changes in state law pertaining to utility taxation. Notwithstanding anything to the contrary contained herein, in no event will WEC or any of the Subsidiaries have any obligation under this paragraph 3 in the event that (i) the PSCW determines that the payments described in this Section 3 may not be properly included in the rent payments under the Facility Lease, or (ii) a unit of the New Facility permanently ceases operation after start-up and is decommissioned
4. NO THIRD PARTY BENEFICIARIES. None of the provisions of this Agreement is intended for the benefit of any person except the parties hereto and their respective successors and permitted assigns. No interest on behalf of any third-party beneficiary is created by this Agreement.
5. REIMBURSEMENT OF CITY EXPENSES. WEC agrees to reimburse the City for its reasonable out-of-pocket expenses incurred by the City in participating in all matters relating to the application for and approval of the New Facilities by the PSCW. The expenses to be reimbursed include the City's out-of-pocket expenses for attorneys and technical consultants. The expenses to be reimbursed will be

determined based on a budget to be prepared by the City, with a cap established above which WEC and the City will share expenses on an equal basis.

6. CITY APPROVALS. WEC, through the Subsidiaries, and the City agree to cooperate in good faith on all matters involving review and approval of the New Facilities by the City and any agencies or instrumentalities thereof. Without limitation, WEC's Subsidiaries will continue to work through the City's Planning and Conditional Use Permit processes to resolve issues raised by the City pertaining to the New Facility. The parties intend that the resolution of all such issues shall be presented to the PSCW as part of its certification process and included as a condition of the Certificate of Public Convenience and Necessity ("CPCN").
7. CITY SUPPORT. Upon execution of this Agreement, the City agrees to use its best efforts to support the construction of the New Facilities before the PSCW and other applicable regulatory or governmental bodies. Subject to the requirements of this paragraph 7, nothing in this Agreement shall be construed as an agreement by the City to grant City approvals, which shall remain subject to the Planning and Conditional Use Permit processes noted above.
8. COMPROMISE OF CITY CLAIMS. WEC and the City acknowledge and agree that the construction and operation of the New Facility, and other activities related thereto as described in the applications before the PSCW for CPCN approval, are anticipated to have a substantial effect on the City (the "Effects"). Without limitation, the Effects might include safety concerns, noise, or the need for additional fire, police and emergency medical service. WEC and the City agree that the obligations undertaken by WEC in this Agreement are designed to mitigate the Effects, and the City agrees not to sue WEC nor any of its Subsidiaries for the Effects except as set forth herein. Nothing in this Agreement shall be construed to preclude the City from taking any action, including the filing of legal actions, to enforce provisions of its ordinances, permits or approvals, or the provisions of this Agreement related to the New Facility; provided, however, that such actions shall not prevent the continued use or operation of the New Facility in accordance with paragraph 1 and all other state permits.
9. DEFAULT PROVISIONS. A party shall be in default under this Agreement if it fails to perform any of its obligations as set forth herein, and such failure continues for a period of sixty (60) days after the defaulting party's receipt of written notice of such failure from the non-defaulting party. In the event of such default, the non-defaulting party shall be entitled to exercise any or all available rights and remedies at law or in equity.
10. ASSIGNMENT. Neither party may assign its interest under this Agreement without the prior written consent of the other party hereto, which consent will not be unreasonably withheld or delayed.

11. **NOTICES.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To WEC:                      Wisconsin Energy Corporation  
                                     231 West Michigan Street  
                                     Milwaukee, WI 53203  
                                     Attn: Larry Salustro, Esq.  
                                     Fax No.: (414) 221-2140

To the City:                      City of Oak Creek  
                                     8640 S. Howell Avenue  
                                     Oak Creek, WI 53154  
                                     Attn: Robert Kufin  
                                     Fax: 414-768-6516

12. **GOVERNING LAW.** This Agreement concerns real property located in the State of Wisconsin, and shall be interpreted and construed according to the laws of the State of Wisconsin.
13. **SEVERABILITY OF PROVISIONS.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by the PSC in a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law, except that as to any such provisions or conditions declared invalid or unenforceable, the parties agree to negotiate a comparable substitute provision.
14. **CAPTIONS.** The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions hereof.
15. **BINDING EFFECT.** The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns.
16. **ENTIRE AGREEMENT.** This Agreement may be modified, amended or terminated only by written instrument signed by both parties.



17. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.
18. ATTORNEYS' AND CONSULTANTS' FEES. In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to court costs, out-of-pocket expenses and reasonable attorneys' and consultants' fees from the unsuccessful party.
19. REPRESENTATIONS AS TO AUTHORITY. Each party to this Agreement represents and warrants as follows:
- (a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the power and authority to consummate the transactions contemplated by this Agreement.
  - (b) All proceedings necessary for it to consummate the transactions contemplated by this Agreement have been duly taken in accordance with law.
  - (c) The persons executing this Agreement on behalf of it have been duly authorized to execute this Agreement.
20. FAX SIGNATURES. The parties agree that fax signatures shall be binding on the parties hereto.
21. EFFECTIVENESS OF PROVISIONS. Except as specified in this paragraph 21, this Agreement is not effective until, and only so long as, the PSCW issues the CPCN for the New Facilities in the City, except that paragraphs 5, 18, and 21 are effective even if the New Facilities are not approved and survive this Agreement. Paragraphs 1E, 6, and 7 are effective immediately upon approval of the Agreement by WEC and the City, but continue in effect only if one or more New Facilities are approved by the PSCW within Oak Creek and WEC proceeds with the project.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WISCONSIN ENERGY CORPORATION

By: [Signature]  
Print Name: LARRY SALUSTAO  
Title: General Counsel, WEC

CITY OF OAK CREEK

By: [Signature]  
Print Name: DAVE J. RICHARDS  
Title: MAYOR

By: [Signature]  
Print Name: BEVERLY A. BURETTA  
Title: CITY CLERK

OFFICE OF THE CITY CLERK

Oak Creek, Wisconsin

June 10, 2003

I hereby certify that the attached is a true and correct copy of Ordinance 2250 passed and adopted by the Common Council of the City of Oak Creek at a regular meeting held on the 3<sup>rd</sup> day of June, 2003.



*Sherily A. Dwyer*

City Clerk

ORDINANCE NO. 2250

By: ALD. Charles Koehler

AN ORDINANCE TO APPROVE A REZONING OF THE PROPERTIES AT 4420, 4500, 4650, 4750 AND 4800 E. ELM ROAD AS WELL AS 4285, 4299, 4431, 4451R, 4503, 4513, 4541, AND 4541R E. OAKWOOD ROAD FROM A-1, AGRICULTURAL, P-1, PARK, M-1, MANUFACTURING AND RS-4, SINGLE FAMILY RESIDENTIAL TO M-1, MANUFACTURING.

(4th Aldermanic District)

WHEREAS, the Wisconsin Energy Corporation has requested that the properties at 4420, 4500, 4650, 4750 and 4800 E. Elm Road as well as 4285, 4299, 4431, 4451R, 4503, 4513, 4541, and 4541R E. Oakwood Road be rezoned from A-1, Agricultural, P-1, Park, M-1, Manufacturing and Rs-4, Single Family Residential to M-1, Manufacturing, and

WHEREAS, these properties are more precisely described as follows: Being part of the Northwest 1/4 and the Northeast Fractional 1/4 of Section 36, Town 5 North, Range 22 East and the Northwest Fractional 1/4 of Section 31, Town 5 North, Range 23 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and describes as follows:

Commencing at the Northwest corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence N89°49'27"E along the North line of said Northeast Fractional 1/4 of Section 36, 2199.57 feet to a point on the East line of East Oakwood Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on said North line and the point of beginning; thence N89°49'27"E along the North line of the aforesaid Northeast Fractional 1/4 of Section 36, 255.1 feet more or less to the Ordinary High Water Mark (OHWM) of the Westerly boundary of Lake Michigan as delineated by the Wisconsin Department of Natural Resources in March of 2002; thence Southeasterly along said OHWM, 3213.1 feet more or less to the South line of the aforesaid Northwest Fractional 1/4 of Section 31; thence S89°11'23"W along said South line, 857.7 feet more or less to a point on the East line of East Elm Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on the South line of the aforesaid Northwest Fraction 1/4 of Section 31; thence S89°11'23"W along said South line, 702.85 feet to the Southeast corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence S89°44'16"W along the South line of the said Northeast Fractional 1/4 Section 36, 2389.50 feet to a point on the Easterly line of the Chicago and North Western Transportation Company right-of-way; thence N21°17'33"W along said Easterly line, 2803.75 feet to an iron pipe found and a point on the South line of the aforesaid East Oakwood Road; thence N89°49'19"E along said South line, 194.06 feet to the Westerly line of Lot 1, Certified Survey Map (C.S.M.) No. 5261; thence S21°17'33"E along said Westerly line, 911.31 feet to an iron rod found; thence N89°46'47"E along the South line of said Lot 1, 366.42 feet to a iron rod found; thence N00°40'16"W along the East line of said Lot 1 and the West line of Lot 2, C.S.M. No. 88, 822.89 feet to a point on the South line of the aforesaid East Oakwood Road, said point also being the Northwest corner of Lot 2, Certified Survey Map No. 88; thence N89°49'27"E along said South line, 528.00 feet to an iron pipe found; thence N00°40'16"W along said South line, 27.00 feet; thence N89°49'27"E along said South line, 1539.27 feet to a point on the aforesaid East line of East Oakwood Road; thence N00°10'33"W along said East line, 33.00 feet to the point of beginning, expecting the Southerly 33 feet West of the meander corner dedicated for road purposes, together with that part of the aforesaid Northeast Fractional 1/4 Section 36 and that part of the aforesaid Northwest Fractional 1/4 of Section 31 lying East of the aforesaid meander

lines and West of the Westerly boundary of Lake Michigan. Containing 193.8592 acres (8,444,507 Sq. Ft.) more or less of land. Subject to riparian rights, covenants, conditions, restrictions and easements of record.; and

WHEREAS, the Plan Commission reviewed the application and recommended that the rezoning be approved; and

WHEREAS, the Common Council held a public hearing on said application on June 3, 2003, at which time all interested parties appeared and were heard; and

WHEREAS, following said public hearing and with the favorable recommendation of the Plan Commission, the Common Council is of the opinion that the best interests of the City would be served if the rezoning was approved; and

NOW, THEREFORE, the Common Council of the City of Oak Creek does hereby ordain as follows:

SECTION 1: To promote the general welfare, public safety and general planning within the City of Oak Creek, the lands hereinabove described are hereby rezoned and the Zoning Map of Chapter 17 of the Municipal Code is hereby amended to reflect the rezoning.

SECTION 2: All ordinances or parts of ordinances and zoning district maps made a part of Chapter 17 of the Municipal Code of the City of Oak Creek in conflict herewith are hereby repealed.

SECTION 3: The several sections of this ordinance are declared to be severable. If any section shall be declared, by a decision of a court of competent jurisdiction, to be invalid, such decision shall not affect the validity of other provisions of this ordinance.

SECTION 4: The rezoning shall take place contemporaneously with the enactment of this ordinance and shall take effect immediately upon its passage and publication.

Passed and adopted this 3 day of June, 2003.

/s/ Elizabeth J. Kopplin  
President, Common Council

Approved this 4 day of June, 2003

/s/ Richard R. Bolender  
Mayor

ATTEST:

/s/ Beverly A. Buretta  
City Clerk

VOTE: Ayes 6 Noes 0

OFFICE OF THE CITY CLERK

Oak Creek, Wisconsin

June 10, 2003

I hereby certify that the attached is a true and correct copy of Ordinance 2251 passed and adopted by the Common Council of the City of Oak Creek at a regular meeting held on the 3<sup>rd</sup> day of June, 2003.



*Jennifer A. Bennett*

City Clerk

Orig.  
Map = Ex A

ORDINANCE NO. 2251

By: Ald. Charles Koehler

AN ORDINANCE TO APPROVE AND AUTHORIZE THE ISSUANCE OF A CONDITIONAL  
USE PERMIT FOR POWER GENERATION, TRANSMISSION AND DISTRIBUTION FOR  
THE PROPERTIES AT 4801 E. ELM ROAD ET. AL.

(4th Aldermanic District)

WHEREAS, the Wisconsin Energy Corporation has applied for a Conditional Use Permit for power generation, transmission and distribution for the properties at 4401, 4415, 4420, 4500, 4501, 4650, 4750, 4800 and 4801 E. Elm Road; 4285, 4299, 4431, 4451, 4503, 4513, 4541 and 4541R E. Oakwood Road; 10700, 10760, 10920, 11002, 11050 and 11050R S. Chicago Road.; and

WHEREAS, this portion of the property is more precisely described as follows:

“AREA A” - Being part of the Northwest 1/4 and the Northeast Fractional 1/4 of Section 36, Town 5 North, Range 22 East and the Northwest Fractional 1/4 of Section 31, Town 5 North, Range 23 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and describes as follows:

Commencing at the Northwest corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence N89°49'27"E along the North line of said Northeast Fractional 1/4 of Section 36, 2199.57 feet to a point on the East line of East Oakwood Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on said North line and the point of beginning; thence N89°49'27"E along the North line of the aforesaid Northeast Fractional 1/4 of Section 36, 255.1 feet more or less to the Ordinary High Water Mark (OHWM) of the Westerly boundary of Lake Michigan as delineated by the Wisconsin Department of Natural Resources in March of 2002; thence Southeasterly along said OHWM, 3213.1 feet more or less to the South line of the aforesaid Northwest Fractional 1/4 of Section 31; thence S89°11'23"W along said South line, 857.7 feet more or less to a point on the East line of East Elm Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on the South line of the aforesaid Northwest Fraction 1/4 of Section 31; thence S89°11'23"W along said South line, 702.85 feet to the Southeast corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence S89°44'16"W along the South line of the said Northeast Fractional 1/4 Section 36, 2389.50 feet to a point on the Easterly line of the Chicago and North Western Transportation Company right-of-way; thence N21°17'33"W along said Easterly line, 2803.75 feet to an iron pipe found and a point on the South line of the aforesaid East Oakwood Road; thence N89°49'19"E along said South line, 194.06 feet to the Westerly line of Lot 1, Certified Survey Map (C.S.M.) No. 5261; thence S21°17'33"E along said Westerly line, 911.31 feet to an iron rod found; thence N89°46'47"E along the South line of said Lot 1, 366.42 feet to a iron rod found; thence N00°40'16"W along the East line of said Lot 1 and the West line of Lot 2, C.S.M. No. 88, 822.89 feet to a point on the South line of the aforesaid East Oakwood Road, said point also being the Northwest corner of Lot 2, Certified Survey Map No. 88; thence N89°49'27"E along said South line, 528.00 feet to an iron pipe found; thence N00°40'16"W along said South line, 27.00 feet; thence N89°49'27"E along said South line, 1539.27 feet to a point on the aforesaid East line of East Oakwood Road; thence N00°10'33"W along said East line, 33.00 feet to the point of beginning, expecting the Southerly 33 feet West of the meander corner dedicated for road

purposes, together with that part of the aforesaid Northeast Fractional 1/4 Section 36 and that part of the aforesaid Northwest Fractional 1/4 of Section 31 lying East of the aforesaid meander lines and West of the Westerly boundary of Lake Michigan. Containing 193.8592 acres (8,444,507 Sq. Ft.) more or less of land. Subject to riparian rights, covenants, conditions, restrictions and easements of record.

“AREA B” - Being part of the Southeast 1/4 Section 36, Town 5, Range 22 East and the Southwest Fractional 1/4 of Section 31, Town 5 North, Range 23 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and described as follows:

Beginning at the Northeast corner of the aforesaid Southeast 1/4 of Section 36; thence N89°11'23"E along the North line of the aforesaid Southwest Fractional 1/4 of Section 31, 702.85 feet to a meander corner on said North line; thence N89°11'23"E along the North line of the aforesaid Southwest Fractional 1/4 of Section 31, 857.7 feet more or less to the Ordinary High Water Mark (OHWM) of the Westerly boundary of Lake Michigan as delineated by the Wisconsin Department of Natural Resources in March of 2002; thence Southeasterly along said OHWM, 4539.9 feet more or less to the South line of the aforesaid Southwest Fractional 1/4 of Section 31; thence S89°12'43"W along said South line, 679.7 feet more or less to a meander corner on the South line of the aforesaid Southeast Fractional 1/4 of Section 31; thence S89°12'43"W along said South line, 1655.56 feet to the Southeast corner of the aforesaid Southeast 1/4 of Section 36; thence S89°13'29"W along the South line of said Southeast 1/4, 1346.79 feet to the Easterly line of the Chicago and North Western Transportation Company right-of-way; thence N21°17'33"W along said Easterly line, 750.00 feet; thence continuing along said Easterly line, N51°17'33"W, 100 feet; thence continuing along said Easterly line, N51°17'33"W, 2009.95 feet to a point on the North line of the aforesaid Southeast 1/4 of Section 36; thence N89°44'16"E along said North line, 2389.50 feet to the point of beginning, excepting the Northerly 33 feet West of the meander corner dedicated for road purposes, together with that part of the aforesaid Southwest Fractional 1/4 of Section 31 lying East of the aforesaid meander line and West of the Westerly boundary of Lake Michigan. Containing 241.3945 acres (10,515,143 Sq. Ft.) more or less of land. Subject to riparian rights, covenants, conditions, restrictions and easements of record.

“AREA K” – Being part of the Southeast 1/4 and the Southwest 1/4 of Section 36, Town 5 North, Range 22 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of the aforesaid Southeast 1/4 of Section 36; thence S00°42'13"E along the West line of said Southeast 1/4 of Section 36, 24.75 feet to a point on the North line of East Elm Road, said point also being the point of beginning; thence continuing on said West line of the Southeast 1/4 of Section 36 and said North line of East Elm Road, S00°42'13"E, 8.25 feet; thence continuing on said North line, N89°44'16"E, 143.35 feet to a point on the Westerly line of the Chicago and North Western Transportation Company right-of-way; thence S21°17'33"E along said Westerly line, 2793.51 feet to a point on the South line of said Southeast 1/4 of Section 36; thence S89°13'29"W along said South line, 1125.71 feet to the Southwest corner of said Southeast 1/4 of Section 36; thence S89°39'50"W along the South line of the aforesaid Southwest 1/4 of Section 36, 22.27 feet to the Northwest corner of the Northeast 1/4 of Section 1, Town 4 North, Range 22 East, Town of Caledonia, Racine County, Wisconsin; thence continuing S89°39'50"W along said South line, 2049.83 feet to a point on the Easterly line of South Chicago Road (S.T.H. "32"), said Easterly line is 33.0 feet Easterly of (as measured at right angles to) the reference line described in Document No. 6669080; thence N44°36'55"W



along said Easterly line, 25.21 feet; thence continuing along said Easterly line and the arc of a curve to the right, 529.07 feet, radius of 1730.06 feet and a chord bearing N35°51'16"W, 527.01 feet; thence N89°39'50"E along South line of lands conveyed by Deed recorded on Reel 4709 of Deeds at Image 0663, 322.71 feet; thence N00°42'13"W along the East line of said Deed, 356.82 feet; thence S89°39'50"W along the North line of said Deed, 295.10 feet; thence N00°20'10"W along the East line of Certified Survey Map (C.S.M.) No. 1173, 134.00 feet; thence S89°39'50"W along the North line of said C.S.M. No. 1173, 116.77 feet; thence N00°20'10"W, 25.00 feet; thence S89°39'50"W, 20.00 feet; thence S00°20'10"E, 25.00 feet; thence S89°39'50"W along the North line of said C.S.M. No. 1173, 49.65 feet to a point on the aforesaid Easterly line of South Chicago Road (S.T.H. "32"); thence Northwesterly along said Easterly line and the arc of a curve to the right, 289.09 feet, radius of 1730.06 feet and a chord bearing N05°08'04" W, 288.75 feet; thence N89°40'13"E along the South line of lands conveyed by Deed recorded on Reel 3975 of Deeds, at Image 1278, 403.69 feet; thence N01°27'03"E along the East line of said Deed, 100.05 feet; thence S89°40'13"W along the North line of said Deed, 189.75 feet; thence N06°26'53"E along the East line of lands conveyed by Deed recorded in Volume 118 of Deeds at page 607, 204.93 feet; thence S89°40'13"W along the North line of said Deed, 214.50 feet to a point on the aforesaid Easterly line of South Chicago Road; thence Northeasterly along said easterly line and the arc of a curve to the right, 142.66 feet, radius of 1730.06 feet and a chord bearing N12°07'05"E, 142.62 feet; thence continuing along said Easterly line, N14°28'49"E, 367.90 feet; thence continuing along said Easterly line and the arc of a curve to the left, 611.60 feet, radius of 3307.05 feet and a chord bearing N09°10'56"E, 610.73 feet to a point on the South line of East Elm Road; thence N89°40'36"E along said South line, 726.76 feet; thence S00°42'24"E along the West line of lands conveyed by Deed in Reel 630 of Deeds at image 1338-1339, 363.00 feet; thence N89°40'36"E along the South line of said Deed, 900.00 feet; thence N00°42'24"W along the East line of said Deed, 363.00 feet to a point on the aforesaid South line of East Elm Road; thence N89°40'36"E along said South line, 684.93 feet to the point of beginning. Containing 171.5600 acres (7,473,155 Sq. Ft.) more or less of land. Subject to covenants, conditions, restrictions and easements of record.

WHEREAS, the Plan Commission reviewed the application and recommended that the Conditional Use Permit be authorized and issued; and

WHEREAS, the Common Council held a public hearing on said application on June 3, 2003, at which time all interested parties appeared and were heard; and

WHEREAS, the Plan Commission had recommended that the application for issuance of the Conditional Use Permit be approved and authorized subject, however, to the imposition of certain conditions and restrictions upon the construction, location and operation of this Conditional Use and which conditions and restrictions are incorporated by reference into the Conditional Use Permit; and

WHEREAS, following said public hearing and with a recommendation from the Plan Commission, the Common Council is of the opinion that the best interests of the City would be served if the Conditional Use Permit was approved and authorized for the lands hereinabove described, subject, however, to the imposition of certain conditions and restrictions on the design, construction, location and operation of the Conditional Use.

NOW, THEREFORE, the Common Council of the City of Oak Creek does hereby ordain as follows:

SECTION 1: To promote the general welfare, public safety and general planning within the City of Oak Creek, the Building Commissioner is hereby authorized to issue a Conditional Use Permit for power generation, transmission and distribution facilities in the M-1 Manufacturing District, which shall include the aforementioned conditions and restrictions.

SECTION 2: The Conditional Use is subject to the aforementioned conditions and restrictions on the design, location, construction and operation of the M-1 Conditional Use for power generation, transmission and distribution.

SECTION 3: All ordinances or parts of ordinances and Zoning District Maps made a part of Chapter 17 of the Municipal Code of the City of Oak Creek in conflict herewith are hereby repealed.

SECTION 4: The several sections of this ordinance are declared to be severable. If any section shall be declared, by a decision of a court of competent jurisdiction, to be invalid, such decision shall not affect the validity of other provisions of this ordinance.

SECTION 5: The approval and authorization of the issuance of a Conditional Use Permit for power generation, transmission and distribution shall take place contemporaneously with the enactment of this ordinance and shall take effect immediately upon its passage and publication.

Passed and adopted this 3 day of June, 2003.

/s/ Elizabeth J. Kopplin  
President, Common Council

Approved this 4 day of June, 2003

/s/ Richard R. Bolender  
Mayor

ATTEST:

/s/ Beverly A. Buretta  
City Clerk

VOTE: Ayes 6 Noes 0

**City of Oak Creek - Conditional Use Permit ("CUP")**

**Conditions and Restrictions**

**Owner:** Wisconsin Energy Corporation  
**Property Address:** 4801 Elm Road  
**Tax Key Number:** 965-9999 et al.

**Approved by Plan Commission:** May 13, 2003  
**Approved by Common Council:** June 3, 2003<sup>1</sup>

**Conditional Use:** Power generation, transmission, distribution, and usual and customary accessory uses

**1. OWNER AND LEGAL DESCRIPTION OF PROPERTY**

- A. The Owner of the property and applicant for this conditional use permit is Wisconsin Energy Corporation or its subsidiaries (the "Owner").
- B. The legal description of the property subject to this conditional use permit is as follows (the "Property")

**Area "A"**

Being part of the Northwest 1/4 and the Northeast Fractional 1/4 of Section 36, Town 5 North, Range 22 East and the Northwest Fractional 1/4 of Section 31, Town 5 North, Range 23 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and describes as follows:

Commencing at the Northwest corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence N89°49'27"E along the North line of said Northeast Fractional 1/4 of Section 36, 2199.57 feet to a point on the East line of East Oakwood Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on said North line and the point of beginning; thence N89°49'27"E along the North line of the aforesaid Northeast Fractional 1/4 of Section 36, 255.1 feet more or less to the Ordinary High Water Mark (OHWM) of the Westerly boundary of Lake Michigan as delineated by the Wisconsin Department of Natural Resources in March of 2002; thence Southeasterly along said OHWM, 3213.1 feet more or less to the South line of the aforesaid Northwest Fractional 1/4 of Section 31; thence S89°11'23"W along said South line, 857.7 feet more or less to a point on the East line of East Elm Road as delineated by the aforesaid City of Oak Creek, said point also being a meander corner on the South line of the aforesaid Northwest Fraction 1/4 of Section 31; thence S89°11'23"W along said South line, 702.85 feet to the Southeast corner of the aforesaid Northeast Fractional 1/4 of Section 36; thence S89°44'16"W along the South line of the said Northeast Fractional 1/4 Section 36, 2389.50 feet to a point on the Easterly line of the Chicago and North Western Transportation Company right-of-way; thence N21°17'33"W along said Easterly line, 2803.75 feet to an iron pipe found and a point on the South line of the aforesaid East Oakwood Road; thence N89°49'19"E along said South line, 194.06 feet to the Westerly line of Lot 1, Certified Survey Map (C.S.M.) No. 5261; thence S21°17'33"E along said Westerly line, 911.31 feet to an iron rod found; thence N89°46'47"E along the South line of said Lot 1, 366.42 feet to a iron rod found; thence N00°40'16"W along the East line of said Lot 1 and the West line of Lot 2, C.S.M. No. 88, 822.89 feet to a point on the South line of the aforesaid East Oakwood Road, said point also being the Northwest corner of Lot 2, Certified Survey Map No. 88; thence N89°49'27"E along said South line, 528.00 feet to an iron pipe found; thence N00°40'16"W along said South line, 27.00 feet; thence N89°49'27"E along said South line, 1539.27 feet to a point on the aforesaid East line of East Oakwood Road; thence N00°10'33"W along said East line, 33.00 feet to the point of beginning, expecting the Southerly 33 feet West of the meander corner dedicated for road purposes, together with that part of the aforesaid Northeast Fractional 1/4 Section 36 and that part of the aforesaid Northwest

<sup>1</sup> City of Oak Creek, Ordinance No. 2251

Fractional 1/4 of Section 31 lying East of the aforesaid meander lines and West of the Westerly boundary of Lake Michigan. Containing 193.8592 acres (8,444,507 Sq. Ft.) more or less of land. Subject to riparian rights, covenants, conditions, restrictions and easements of record.

Area "B"

Being part of the Southeast 1/4 Section 36, Town 5, Range 22 East and the Southwest Fractional 1/4 of Section 31, Town 5 North, Range 23 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and described as follows:

Beginning at the Northeast corner of the aforesaid Southeast 1/4 of Section 36; thence N89°11'23"E along the North line of the aforesaid Southwest Fractional 1/4 of Section 31, 702.85 feet to a meander corner on said North line; thence N89°11'23"E along the North line of the aforesaid Southwest Fractional 1/4 of Section 31, 857.7 feet more or less to the Ordinary High Water Mark (OHWM) of the Westerly boundary of Lake Michigan as delineated by the Wisconsin Department of Natural Resources in March of 2002; thence Southeasterly along said OHWM, 4539.9 feet more or less to the South line of the aforesaid Southwest Fractional 1/4 of Section 31; thence S89°12'43"W along said South line, 679.7 feet more or less to a meander corner on the South line of the aforesaid Southeast Fractional 1/4 of Section 31; thence S89°12'43"W along said South line, 1655.56 feet to the Southeast corner of the aforesaid Southeast 1/4 of Section 36; thence S89°13'29"W along the South line of said Southeast 1/4, 1346.79 feet to the Easterly line of the Chicago and North Western Transportation Company right-of-way; thence N21°17'33"W along said Easterly line, 750.00 feet; thence continuing along said Easterly line, N21°17'33"W, 100 feet; thence continuing along said Easterly line, N21°17'33"W, 2009.95 feet to a point on the North line of the aforesaid Southeast 1/4 of Section 36; thence N89°44'16"E along said North line, 2389.50 feet to the point of beginning, excepting the Northerly 33 feet West of the meander corner dedicated for road purposes, together with that part of the aforesaid Southwest Fractional 1/4 of Section 31 lying East of the aforesaid meander line and West of the Westerly boundary of Lake Michigan. Containing 241.3945 acres (10,515,143 Sq. Ft.) more or less of land. Subject to riparian rights, covenants, conditions, restrictions and easements of record.

Area "K"

Being part of the Southeast 1/4 and the Southwest 1/4 of Section 36, Town 5 North, Range 22 East, City of Oak Creek, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of the aforesaid Southeast 1/4 of Section 36; thence S00°42'13"E along the West line of said Southeast 1/4 of Section 36, 24.75 feet to a point on the North line of East Elm Road, said point also being the point of beginning; thence continuing on said West line of the Southeast 1/4 of Section 36 and said North line of East Elm Road, S00°42'13"E, 8.25 feet; thence continuing on said North line, N89°44'16"E, 143.35 feet to a point on the Westerly line of the Chicago and North Western Transportation Company right-of-way; thence S21°17'33"E along said Westerly line, 2793.51 feet to a point on the South line of said Southeast 1/4 of Section 36; thence S89°13'29"W along said South line, 1125.71 feet to the Southwest corner of said Southeast 1/4 of Section 36; thence S89°39'50"W along the South line of the aforesaid Southwest 1/4 of Section 36, 22.27 feet to the Northwest corner of the Northeast 1/4 of Section 1, Town 4 North, Range 22 East, Town of Caledonia, Racine County, Wisconsin; thence continuing S89°39'50"W along said South line, 2049.83 feet to a point on the Easterly line of South Chicago Road (S.T.H. "32"), said Easterly line is 33.0 feet Easterly of (as measured at right angles to) the reference line described in Document No. 6669080; thence N44°36'55"W along said Easterly line, 25.21 feet; thence continuing along said Easterly line and the arc of a curve to the right, 529.07 feet, radius of 1730.06 feet and a chord bearing N35°51'16"W, 527.01 feet; thence N89°39'50"E along South line of lands conveyed by Deed recorded on Reel 4709 of Deeds

at Image 0663, 322.71 feet; thence N00°42'13"W along the East line of said Deed, 356.82 feet; thence S89°39'50"W along the North line of said Deed, 295.10 feet; thence N00°20'10"W along the East line of Certified Survey Map (C.S.M.) No. 1173, 134.00 feet; thence S89°39'50"W along the North line of said C.S.M. No 1173, 116.77 feet; thence N00°20'10"W, 25.00 feet; thence S89°39'50"W, 20.00 feet; thence S00°20'10"E, 25.00 feet; thence S89°39'50"W along the North line of said C.S.M. No. 1173, 49.65 feet to a point on the aforesaid Easterly line of South Chicago Road (S.T.H. "32"); thence Northwesterly along said Easterly line and the arc of a curve to the right, 289.09 feet, radius of 1730.06 feet and a chord bearing N05°08'04" W, 288.75 feet; thence N89°40'13"E along the South line of lands conveyed by Deed recorded on Reel 3975 of Deeds, at Image 1278, 403.69 feet; thence N01°27'03"E along the East line of said Deed, 100.05 feet; thence S89°40'13"W along the North line of said Deed, 189.75 feet; thence N06°26'53"E along the East line of lands conveyed by Deed recorded in Volume 118 of Deeds at page 607, 204.93 feet; thence S89°40'13"W along the North line of said Deed, 214.50 feet to a point on the aforesaid Easterly line of South Chicago Road; thence Northeasterly along said easterly line and the arc of a curve to the right, 142.66 feet, radius of 1730.06 feet and a chord bearing N12°07'05"E, 142.62 feet; thence continuing along said Easterly line, N14°28'49"E, 367.90 feet; thence continuing along said Easterly line and the arc of a curve to the left, 611.60 feet, radius of 3307.05 feet and a chord bearing N09°10'56"E, 610.73 feet to a point on the South line of East Elm Road; thence N89°40'36"E along said South line, 726.76 feet; thence S00°42'24"E along the West line of lands conveyed by Deed in Reel 630 of Deeds at image 1338-1339, 363.00 feet; thence N89°40'36"E along the South line of said Deed, 900.00 feet; thence N00°42'24"W along the East line of said Deed, 363.00 feet to a point on the aforesaid South line of East Elm Road; thence N89°40'36"E along said South line, 684.93 feet to the point of beginning. Containing 171.5600 acres (7,473,155 Sq. Ft.) more or less of land. Subject to covenants, conditions, restrictions and easements of record.

- C. A Property survey, sealed by a professional surveyor registered in the state of Wisconsin, shall be provided to the City by the Owner by January 1, 2004.

## 2. **DEFINITIONS**

- A. "Commencement of Construction (COC)" is defined in Wis. Stats. s. 196.49(1)(b).  
 B. "Commercial Operation Date (COD)" is defined as the day that an electric generating unit begins commercial operation as defined by the Public Service Commission.  
 C. "Elm Road Generating Station (ERGS)" is defined as the two (2) supercritical pulverized coal electric generating units and one (1) integrated gasification combined-cycle electric generating unit proposed in the Owner's application to the Public Service Commission assigned Docket No. 05-CE-130.  
 D. "Oak Creek Power Plant (OCP)" is defined as the five (5) existing (as of May 2003) electric generating units owned by Owner affiliate Wisconsin Electric Power Company, located in the City of Oak Creek.

## 3. **GENERAL PLANS AND EASEMENTS**

- A. The following plans for the area affected by the conditional use shall be submitted to or approved by the City as outlined below. The plans and their contents are as follows:
- 1) An Initial Property Development and Construction Laydown Plan Sheet shall be submitted to the City for ERGS Units 1 and 2 at least 2 months prior to COC of ERGS Units 1 and 2 and for EGRS Unit 3 at least 2 months prior to COC of ERGS Unit 3. The plan shall include at least the following:
    - a) scale of 1 inch = 200 feet covering the entire Property
    - b) toe of slope positions and heights of screening berms
    - c) property lines, setbacks, and easements
    - d) electric, water, sewer, telephone, and other utility line easements and corridors

- e) footprints, heights, and square footage of structures
  - f) material storage areas
  - g) construction trailers
  - h) driveways with traffic flow arrows
  - i) parking areas
  - j) vegetative cover areas
  - k) paved areas
  - l) fencing heights and type
  - m) lighting positions and directions in accordance with Section 17.0808 of the Municipal Code at:
    - i) roadways
    - ii) construction storage/laydown areas
    - iii) Property entrance points
  - n) note requiring that all lighting be directed away from the Oakview #3 and Barton Oaks Subdivisions
  - o) security facilities
  - p) fire water supply line and hydrant locations
  - q) land and water loading and unloading berths
- 2) A Final Property Development Plan Sheet shall be submitted to the City for ERGS Units 1 and 2 at least 6 months prior to COD of either ERGS Units 1 or 2, and at least 6 months prior to COD of ERGS Unit 3. The plan shall include at least the following:
- a) scale of 1 inch = 200 feet covering the entire Property
  - b) 5-foot topographic contours showing final grading
  - c) property lines, setbacks, and easements
  - d) electric, water, sewer, telephone, and other utility line easements and corridors
  - e) footprints, heights, and square footage of structures
  - f) material storage areas
  - g) driveways with traffic flow arrows
  - h) parking areas
  - i) vegetative cover areas
  - j) drainage ditches, retention basins, detention basins, wetlands, and surface water flow arrows
  - k) paved areas
  - l) fencing heights and type
  - m) lighting positions and directions in accordance with Section 17.0808 of the Municipal Code at:
    - i) roadways
    - ii) entrance points
  - n) a note requiring that all lighting be directed away from the Oakview #3 and Barton Oaks Subdivisions
  - o) security facilities
  - p) fire water supply line and hydrant locations
  - q) land and water loading and unloading berths
  - r) location of signage fronting Oakwood Road, Elm Road, and Highway 32
- 3) An Initial Landscaping Plan covering the area between the Construction Setback Line A and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions depicted on Exhibit A attached hereto shall be submitted to the City prior to COC of ERGS Units 1 and 2 for approval by the Plan Commission. Failure of the Plan Commission to approve this plan shall not prohibit or otherwise inhibit construction on the Property. A Final Landscaping Plan, covering the same area shall be submitted to the City within 30 months after COC of ERGS Units 1 and 2 for approval by the Plan Commission. The plans of any portion of the Oak Creek South Ash Landfill or the Oak Creek North Ash Landfill may also be subject to approval of the Department of Natural Resources and shall include at least the following:
- a) plan sheet that includes the following:
    - i) scale of 1 inch = 200 feet covering the entire Property

- ii) 5-foot topographic contours showing grading
  - iii) property lines
  - iv) driveways with traffic flow arrows
  - v) parking areas
  - vi) vegetative cover areas
  - vii) drainage ditches, retention basins, detention basins, wetlands, and surface water flow arrows
  - viii) paved areas
  - ix) fencing heights and type
  - x) wetlands and greenspace
  - xi) groundcover
  - xii) berms
  - xiii) storage areas
- b) number, initial size, mature size and types of plantings and seeding
- c) landscape maintenance plan
- d) signage, driveway, and planting details
- e) schedule of landscaping activities which shall include plans to complete the screening vegetation along the following areas within 18 months of COC.
  - i) north-facing slope of the Oak Creek South Ash Landfill along Elm Road from Hwy 32 east to the railroad tracks
  - ii) west-facing slope of the Oak Creek South Ash Landfill along Hwy 32 from Elm Road south to County Line Road
  - iii) any berm(s) to be located from the northeast corner of the Oak Creek South Ash Landfill to Elm Road near the Elm Road/railroad track intersection
  - iv) any berm(s) to be located east of the railroad tracks and north of the Proposed Main Access Road as labeled on Exhibit A
- 4) A Plan for the Visitor's Center building and surrounding grounds shall be submitted to the City at least 3 months prior to start of construction of the Visitor Center, for approval by the Plan Commission. The plan shall include at least the following:
  - a) architectural elevations
  - b) building floor plans and elevations
  - c) materials of construction
  - d) public access plan to the Lake Michigan water front in compliance with Section 17.0328 of the Municipal Code including:
    - i) lakefront access
    - ii) preservation areas
    - iii) recreational trails
    - iv) fishing pier
  - e) parking requirements in accordance with Section 17.0403 of the Municipal Code
  - f) driveway approaches in compliance with all the standards set forth in Chapter 6 of the Oak Creek Municipal Code
  - g) parking areas shall be lighted in accordance with Section 17.0808 of the Municipal Code
  - h) landscaping in accordance with Sections 17.1010 of the Municipal Code
- 5) An Initial Grading, Drainage and Stormwater Management Plan shall be submitted to the City at least 2 months prior to the COC. The drainage and stormwater portion of the plan shall meet the intent of Sec.s 13.100 through 13.114 of the Municipal Code, except as authorized by the City Engineer. The Plan Commission shall approve the initial grading portion of the plan. Failure of the Plan Commission to approve this portion of the plan shall not prohibit or otherwise inhibit construction on the Property. A Final Grading, Drainage and Stormwater Management Plan shall be submitted to the City within 6 months of COD. The drainage and stormwater portion of the plan shall meet the intent of Sec.s 13.100 through 13.114 of the Municipal Code, except as authorized by the City Engineer. The Plan Commission shall approve the final grading portion of the plan. Nothing herein shall be construed to require the Owner to do anything inconsistent with any state or federal regulation. The plans shall

include at least the following:

- a) plan sheet that includes the following:
    - i) scale of 1 inch = 200 feet covering the entire Property
    - ii) 5-foot topographic contours showing final grading
    - iii) property lines, setbacks, and easements
    - iv) electric, water, sewer, telephone, and other utility line easements and corridors
    - v) footprints, heights, and square footage of structures
    - vi) material storage areas
    - vii) driveways with traffic flow arrows
    - viii) parking areas
    - ix) vegetative cover areas
    - x) drainage ditches, retention basins, detention basins, wetlands, and surface water flow arrows
    - xi) paved areas
    - xii) wetlands and greenspace
    - xiii) storm sewers
    - xiv) detention/retention basins, if needed
  - b) grading schedule
  - c) plan for slope texturing along the following areas:
    - i) north-facing slope of the Oak Creek South Ash Landfill along Elm Road from Hwy 32 east to the railroad tracks
    - ii) west-facing slope of the Oak Creek South Ash Landfill along Hwy 32 from Elm Road south to County Line Road
    - v) any berm(s) to be located from the northeast corner of the Oak Creek South Ash Landfill to Elm Road near the Elm Road/railroad track intersection
    - vi) any berm(s) to be located east of the railroad tracks and north of the Proposed Main Access Road as labeled on Exhibit A
  - d) a Lakefront Shoreline and Bluff Stabilization Plan in compliance with Section 17.0328 of the Municipal Code shall be submitted to the City at least 2 months prior to COC for Plan Commission approval.
  - e) proper drainage shall be maintained with no standing water except at retention/detention basins and wetlands.
- 6) A Fire Protection and Emergency Management Plan for the Property for the Construction Period shall be submitted to the City for ERGS Units 1 and 2 at least 2 months prior to COC of ERGS Unit 1 and for ERGS Unit 3 at least 2 months prior to COC of ERGS Unit 3.
- 7) A Fire Protection and Emergency Management Plan for the Property for the Operations Period shall be submitted to the City for ERGS Units 1 and 2 at least 6 months prior to the COD for ERGS Units 1 and 2 and for ERGS Unit 3 at least 6 months prior to the COD for ERGS Unit 3.
- B. If required by the City, public easements for telephone, sanitary sewer, storm sewer and watermain shall be granted by the Owner. Said easements shall be maintained free and clear of any buildings, structures, trees or accessory outdoor appurtenances. Shrubbery type plantings shall be permitted provided there is access to each of the aforementioned systems and their appurtenances.

#### **4. CONSTRUCTION**

- A. Until all of the berms in this area have been constructed, construction excavation, earthmoving, grading, and landscaping activities north and west of the Construction Setback Line A depicted on Exhibit A, between the Construction Setback Line A and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions, shall be permitted on Saturday from September 1 through May 31 from 6:30 a.m. to 5:00 p.m., and throughout the year Monday through Friday from 6:30 a.m. to 7:00 p.m.. Until all of the berms in this area have been constructed, construction activities to the east and south of Construction Setback Line A shall be permitted anytime except from 3:30 a.m. on Sunday to 6:30 a.m.



on Monday. .

- B. After the berms identified in Condition 4.A. are constructed, no construction excavation, earthmoving, grading, or equipment laydown activities shall occur north and west of the Construction Setback Line B depicted on Exhibit A, between Construction Setback Line B and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions. Construction activities to the east and south of Construction Setback Line B shall be permitted anytime.
- C. Construction shifts for ERGS shall not begin between 7:01 a.m. and 8:30 a.m. and 3:31 p.m. and 5:00 p.m.
- D. No idling of earth-moving equipment shall be allowed for periods of more than 15 minutes north and west of the Construction Setback Line A depicted on Exhibit A, between the Construction Setback Line A and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions.
- E. All construction related parking shall be located on the Property.
- F. The Owner or Owner's representative and the Owner's construction contractors shall meet with the Police Chief prior to COC to discuss construction security plans and procedures.
- G. During construction activities, dust management shall be conducted in accordance with the applicable state law and regulations.
- H. In addition to the construction mitigation measures listed above, the following additional measures shall be undertaken:
  - 1) In order to minimize construction dust, construction roads will be paved where practical. Wet dust suppression will be used on roads when weather conditions permit. A wheel cleaning method will be provided for construction vehicles. Vehicle material covers will be used where practical and appropriate vehicle speeds will be established.
  - 2) Construction noise mitigation measures will be accomplished through a muffler inspection program for all heavy construction vehicles. If there is a non-compliance with the noise requirements, a supplemental muffler program will be used if feasible to further reduce noise levels from some construction vehicles.

## **5. GRADING, BUILDING, AND SETBACKS**

- A. Except for general maintenance, landscaping, wetland mitigation, or construction of access roads, transmission lines, underground utilities, and utility tie-ins, no construction activities shall occur in the following areas also depicted on Exhibit A attached hereto:
  - 1) from the south Elm Road right-of-way, 400 feet south beginning at Highway 32 on the west and ending at the railroad tracks on the east, except for grading of the soil berm to be located from the northeast corner of the Oak Creek South Ash Landfill to a point near the Elm Road/railroad track intersection,
  - 2) from the east Highway 32 right-of-way, 300 feet east beginning at Elm Road on the north and ending at County Line Road on the south, and
  - 3) from the south Oakwood Road right-of-way, 500 feet south beginning at the railroad tracks on the west and ending at Lake Michigan on the east.
- B. Any soil berm along Highway 32 between County Line Road and Elm Road shall have a final elevation no higher than 775 feet mean sea level. During the ERGS construction period, the height of this berm may extend to no greater than 790 feet mean sea level. If the berm is extended higher than elevation 775

feet mean sea level, the Owner will be allowed one year following written notice by the City, to lower the berm to the final elevation of 775 feet mean sea level. The general location of this berm is depicted on Exhibit A attached herein. Construction of any berm in this area shall begin at COC and be completed no later than 12 months after the COC.

- C. Any soil berm along Elm Road between Highway 32 and the railroad tracks shall have a final elevation no higher than 775 feet mean sea level. During the ERGS construction period, the height of this berm may extend to no greater than 790 feet mean sea level. If the berm is extended higher than elevation 775 feet mean sea level, the Owner will be allowed one year following written notice by the City, to lower the berm to the final elevation of 775 feet mean sea level. The general location of this berm is depicted on Exhibit A attached herein. Construction of any berm in this area shall begin at COC and be completed no later than 12 months after the COC.
- D. Unless disallowed by the Public Service Commission, the Department of Natural Resources or Office of Commissioner of the Railroad, a screening berm(s) shall be placed east of the railroad tracks and north of the Proposed Main Access Road, as depicted on Exhibit A, such that they form a horizontally continuous barrier between the ERGS plant construction area and the Oakview #3 or Barton Oaks subdivisions. The berm(s) shall have a final elevation of at least 730 feet mean sea level but no greater than 740 feet mean sea level. During the ERGS construction period, the height of this berm may extend to no greater than 750 feet mean sea level. If the berm is extended higher than elevation 740 feet mean sea level, the Owner will be allowed one year following written notice by the City, to lower the berm to the final elevation of 740 feet mean sea level. Construction of this berm(s) shall begin at COC and be completed no later than 12 months after the COC.
- E. A soil berm shall be placed from the northeast corner of the Oak Creek South Ash Landfill to a point near the Elm Road/railroad track intersection, as depicted on Exhibit A. The berm shall have a final elevation of at least elevation 730 feet mean level but no greater than 740 feet mean sea level. During the ERGS construction period, the height of this berm may extend to no greater than 750 feet mean sea level. If the berm is extended higher than elevation 740 feet mean sea level, the Owner will be allowed one year following written notice by the City, to lower the berm to the final elevation of 740 feet mean sea level. along its entire length. Construction of this berm shall begin at COC and be completed no later than 12 months after the COC.
- F. Sideslopes of perimeter soil berms facing Elm Road, Highway 32, Oakwood Road, and the Oakwood #3/Barton Oaks subdivisions shall be contoured showing variable elevations and vegetated with a slope no steeper than 3 horizontal to 1 vertical.
- G. No excavated soils that are contaminated, other than those approved by the Department of Natural Resources, shall be placed between the Construction Setback Line A (depicted on Exhibit A) and the Property lines nearest to the Oakview #3 or Barton Oaks subdivisions.

## **6. MAINTENANCE AND OPERATION**

- A. Solid waste collection and recycling shall be the responsibility of the Owner.
- B. Outdoor storage shall not be within the setbacks outlined in the Grading, Building, and Setbacks Section.
- C. During operations, dust management shall be conducted in accordance with the Department of Natural Resources Construction and Operations air permit requirements.

## **7. SIGNS**

- A. All signs visible from public roads shall conform to the provisions of Sec. 17.0706 of the Municipal Code.

- B. No signage shall be allowed on the stacks.

## **8. WATER SUPPLY**

- A. For City water supply requirements up to 1,000 gpm nominal for the Property, the owner will connect to the Owner's existing 12-inch water main on the Property.
- B. For City water supply requirements in excess of 1,000 gpm nominal, the Owner shall be responsible for the cost to provide water main service to the Property, as mutually determined and agreed upon by the Owner, City Engineer, and Water and Sewer Utility, in accordance with the City's "Master Plan for Water Supply Service."

## **9. SANITARY SEWER**

- A. For up to 200 gpm nominal of wastewater discharge to the City sanitary sewer mains from the Property, the Owner will connect to the Owner's existing 12-inch sanitary sewer discharge main on the Property.
- B. For wastewater discharge in excess of 200 gpm nominal, the Owner shall be responsible for the cost to provide the sanitary sewer service to the Property, as mutually determined and agreed upon by the Owner, City Engineer, and Water and Sewer Utility, in accordance with the City's "Master Plan for Water Sanitary Sewer Service."
- C. The Owner agrees that any wastewater or surface waters discharged from the Property shall not have a deleterious effect on the City's sanitary sewer system or surface waters.

## **10. TRAFFIC, ROADWAYS, AND ACCESS**

- A. The Owner shall repave Oakwood Road from Highway 32 to a terminating cul de sac, consistent with the City Design Manual. After a portion of Oakwood Road is vacated by the City, the Owner shall be responsible for the physical removal of the vacated portion of Oakwood Road, or its reconstruction as a private road. The Owner will not object to such vacation. The Owner shall dedicate any additional right-of-way needed for the cul de sac. All work shall be completed prior to the opening of the Visitor's Center.
- B. The City shall design and construct a connector road from the new terminus of Elm Road to its closest frontage road, consistent with the City Design Manual. The Owner shall dedicate any additional right-of-way needed for the connector road.
- C. The Owner shall construct a secondary access road off of Oakwood Road which shall connect to an existing roadway within the Property which ultimately connects to Highway 32. The Owner agrees to complete construction of this access road within 24 months of COC, or the opening of the Visitor's Center, whichever is first. Thereafter, the City shall commence vacation proceedings for a portion of Elm Road. Upon vacation of a portion of Elm Road the Owner shall be responsible for physical removal of any vacated portion of Elm Road. All physical removal of any vacated portion of Elm Road shall be completed within 2 months of commencement of its removal. The Owner will not object to such vacation. Unless disallowed by the Public Service Commission, the Department of Natural Resources or Office of Commissioner of the Railroad, the Owner will complete construction of the proposed main access road railroad crossing as shown on Exhibit A within 12 months of vacating Elm Road.
- D. All construction worker and delivery vehicle access to the Property shall be directly off of Highway 32 on to the Property.
- E. Within 12 months of the COC, the primary access point to the Property for operations personnel shall be directly from Highway 32.

- F. In the event of an emergency that prohibits access from Highway 32, all traffic essential to the operations shall have the capability to access the Property from Oakwood Road.
- G. Visitor Center access shall be from Oakwood Road. Access to the Property for the construction of the Visitor Center and its access road may be from Oakwood Road.
- H. The Owner shall conduct a traffic study for Highway 32 from County Line Road to Highway 100 and be responsible for the installation of traffic control signals and turning lanes if recommended by the study, subject to approval by Department of Transportation provided that the applicable governmental entity acquires any land required for such turning lanes. The Owner shall reimburse the City for any and all costs incurred in acquiring any land required for such turning lanes.

#### 11. NOISE DURING OPERATIONS

- A. During operations, when no construction activities occur, noise levels shall be determined at specified locations using specified protocols as defined below. The monitoring locations, limits, monitoring and compliance protocols, reporting protocols, and non-compliance penalty are as follows.
  - 1) Noise monitoring stations consisting of continuous noise monitoring devices and recorders shall be installed by the Owner by the COD of the last approved ERGS Unit and maintained by the Owner during the operational life of the ERGS to monitor noise emissions from the Property. The monitoring stations shall be installed at the locations described below and depicted on Exhibit A hereto attached and as agreed to by the City and the Owner. The monitoring stations shall be accessible to the Owner and City for purposes of data recording, quality assurance, quality control, and verification of results. The data collected shall include the 10 minute  $L_{eq}$  and the 1 hour  $L_{eq}$ ,  $L_{max}$ ,  $L_1$ ,  $L_{10}$ ,  $L_{50}$ , and  $L_{90}$  for dbA and dbC, plus a full system calibration signal. All data shall be transmitted electronically to the Owner at the end of each day in a format agreed to by the City and the Owner. The Owner shall provide the City electronic access to the data on a real-time basis, in a format agreed to by the City and Owner. All costs to procure, install, and maintain the monitoring station shall be paid by the Owner. The continuous noise monitoring devices are not for assessing compliance.

##### Station Location

##### Description

- |   |   |
|---|---|
| 1 | East of Haas Park and north of Elm Road   |
| 2 | Approximately half way between ERGS Unit 1 and 2 and monitoring location No. 1. |

- 2) The noise emissions associated with operations activity on the Property, measured at monitoring location No. 1, must be less than or equal to the following dBA and dBC values.

##### dBA Limit (10 min. $L_{eq}$ )

##### dBC Limit (10 min. $L_{eq}$ )

50

60

- 3) Noise measurements shall be made in accordance with the methodology in the latest version of the American National Standards Institute (ANSI) S12.9/Part 1 and Part 3. The measurements shall be a 10 minute time-weighted average of dBA and dBC readings, exclusive of intrusive events, and shall be verified by both the City and Owner. The Owner shall be in compliance with the CUP if the measurements at location No. 1 do not exceed the limits designated above. The Owner shall be considered out of compliance with the CUP if the Owner or City records an exceedance of any limit (manual measurement required) and the Owner has been notified of an exceedance of any limit by the City and fails to restore the condition to a level below the compliance limit within 5 days thereafter. The 5 days is considered a grace period for the Owner to restore the condition to a level below the compliance limit. Noise emissions from safety/relief valves and during start-up shall be excluded from the noise compliance requirements.

- 4) Noise levels are to be measured by an engineer, technician, or acoustical consultant qualified by experience or training.
- 5) The noise measuring instrumentation shall comply with ANSI S1.4, ANSI S1.43, and ANSI S1.40. The noise level meter shall be a "Type 1 Precision" model.
- 6) If the Owner is considered out of compliance with the CUP, a fine of \$1,000 per day shall be imposed against the Owner. The penalty shall begin on the first day after the City notifies the Owner that the compliance limit was not met.

## **12. NOISE DURING CONSTRUCTION**

- A. Noise levels during the construction of ERGS will be determined at a specified location using specified protocols as defined below. Noise limits are set for all ERGS construction activities on the Property. The monitoring location, limits, monitoring and compliance protocols, reporting protocols, and non-compliance penalties are as follows.
  - 1) A noise monitoring station consisting of continuous noise monitoring device and recorder shall be installed by the Owner by the COC and maintained by the Owner during the period of construction of ERGS to monitor noise emissions from the Property. The monitoring station shall be installed at the location described below and depicted on Exhibit A hereto attached and as agreed to by the City and the Owner. The monitoring station shall be accessible to the City for purposes of data recording, quality assurance, quality control, and verification of results. The data collected shall include the 1 hour  $L_{eq}$ ,  $L_{max}$ ,  $L_1$ ,  $L_{10}$ ,  $L_{50}$ , and  $L_{90}$  for dbA, plus a full system calibration signal. All data shall be transmitted electronically to the Owner at the end of each day in a format agreed to by the City and the Owner. The Owner shall provide the City electronic access to the data on a real-time basis, in a format agreed to by the City and Owner. For the first 12 months after COC, the Owner shall submit monthly reports interpreting the noise monitoring data to the City. Thereafter, the Owner shall submit quarterly reports interpreting the noise monitoring data to the City. All costs to procure, install, and maintain the monitoring station shall be paid by the Owner.

### **Station Location**

### **Description**

1

East of Haas Park and north of Elm Road

- 2) To be in compliance with the CUP, the noise emissions associated with construction activity on the Property, measured at monitoring station No. 1, must be less than or equal to the following dBA value at the specified times.
  - a) Until completion of construction of the berms between the Construction Setback Line A and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions:

### **Monday – Friday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour <math>L_{50}</math>)</u></b>
6:30 AM to 7:00 PM	None
7:00 PM to Midnight	63
Midnight to 6:30 AM	63

**Saturday (September 1 through May 31)**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 5:00 PM	None
5:00 PM to Midnight	63
Midnight to 6:30 AM	63

**Saturday (June 1 through August 31)**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
Anytime	63

**Sunday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
Anytime	63

- b) After completion of construction of the berms between the Construction Setback Line A and the boundary of the Property nearest to the Oakview #3 or Barton Oaks Subdivisions, but prior to substantial completion of the excavation, earthmoving, and grading activities:

**Monday – Friday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 7:00 PM	75
7:00 PM to Midnight	63
Midnight to 6:30 AM	63

**Saturday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 5:00 PM	75
5:00 PM to Midnight	63
Midnight to 6:30 AM	63

**Sunday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
Anytime	63

- c) After substantial completion of the excavation, earthmoving, and grading activities:

**Monday – Friday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 7:00 PM	75
7:00 PM to Midnight	55
Midnight to 6:30 AM	55

**Saturday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 5:00 PM	63
5:00 PM to Midnight	55
Midnight to 6:30 AM	55

**Sunday**

<b><u>Hours</u></b>	<b><u>dBA Limit (1 Hour L<sub>50</sub>)</u></b>
6:30 AM to 5:00 PM	63
5:00 PM to Midnight	55
Midnight to 6:30 AM	55

- 3) Noise measurements shall be made in accordance with the methodology in the latest version of the American National Standards Institute (ANSI) S12.9/Part 1 and Part 3. The measurements shall be a 1 hour L<sub>50</sub> dBA readings, exclusive of intrusive events. The Owner shall be in compliance with the CUP if the measurements at location No. 1 do not exceed the limits designated above. The Owner shall be considered out of compliance with the CUP if the Owner or City records an exceedance of noise emissions from construction activity on the Property of any limit outlined above which has been substantiated by the City or a citizen complaint related to the exceedance, and the Owner fails to restore the condition to a level below the compliance limit, within 5 days thereafter. The 5 days is considered a grace period for the Owner to restore the condition to a level below the compliance limit. Noise emissions from pile-driving, blasting, and other similar activities shall be excluded from the noise compliance requirements provided the Owner notifies the City and residents of the Barton Oaks and Oakview #3 subdivisions in writing at least 7 days prior to such activity.
- 4) Noise levels are to be measured automatically at the monitoring station. The monitoring station is to be maintained by an engineer, technician, or acoustical consultant qualified by experience or training.
- 5) The noise measuring instrumentation shall comply with ANSI S1.4, ANSI S1.43, and ANSI S1.40. The noise level meter shall be a "Type 1 Precision" model.
- 6) If the Owner is considered out of compliance with the CUP, a fine of \$1,000 per day shall be imposed against the Owner. The penalty shall begin on the first day after the City notifies the Owner that the compliance limit was not met.

**13. MISCELLANEOUS**

- A. The approval and execution of this permit shall confirm acceptance of the terms and conditions hereof by the Owner, and this permit, when recorded, shall run with said Property until revoked by the City, or terminated by mutual agreement of the City and the Owner, and their subsidiaries, related entities, successors and assigns.

- B. As to ERGS, the Owner shall be responsible for, and indemnify the City against all claims, damages and costs associated with toxic, hazardous, flammable or combustible materials stored, kept upon or coming to or from the Property, and for the removal, confinement, neutralizing clean-up or remediation of such materials by persons, firms, agencies, departments, or companies specializing in such materials.
- C. The Owner shall provide the City with a written report from a qualified expert of the impact of barge traffic on recreational uses of Lake Michigan. The Owner agrees to cooperate with the governing agency to mitigate any impact caused by such barge traffic.
- D. Except as required by the Federal Aviation Administration, all lighting on the site during construction and operations activities shall be directed away from the Oakview #3 and Barton Oaks subdivisions.
- E. The Owner shall be responsible for implementation of any plans included herein according to schedules that may be approved by the City.

#### **14. INSPECTIONS AND PERMIT FEES**

- A. City inspections will be conducted in accordance with state and local law. The Owner will reimburse the City for any out-of-pocket expenses related to any required and authorized inspections to the extent that the City has jurisdiction to conduct such inspections. The City will consider utilizing the Owner's inspection reports in lieu of hiring an independent inspector.

#### **15. PERMITTED USES**

- A. Power generation, transmission, and distribution
- B. Usual and customary accessory uses to the above listed permitted uses including, the Visitor's Center, coal ash disposal facilities, and air and noise monitoring equipment and facilities.

#### **16. TIME OF COMPLIANCE**

- A. The Owner shall begin installing or constructing the elements required in these conditions and restrictions for the conditional uses, upon receipt of the Certificate of Public Convenience and Necessity required by the Public Service Commission, the air and Chapter 30 Permits required by the Department of Natural Resources, and approvals required by the Owner for ERGS. This conditional use approval shall expire within 6 months after decommissioning of the last operating power generating unit on the Property.

#### **17. COAL STORAGE AND HANDLING FACILITIES**

- A. If approved by the Public Service Commission and permitted by the Department of Natural Resources, all coal storage and handling facilities shall be located within the rail spur loop, approximately 2,000 feet southeast of the intersection of Elm Road and the railroad tracks in order to mitigate potential impacts to the residents of the Oakview #3 and Barton Oaks subdivisions.

#### **18. OTHER REGULATIONS**

- A. Compliance with all other applicable State and Federal regulations not heretofore stated or referenced, is mandatory.
- B. City and Owner agree that this CUP shall be, to the extent applicable under Wisconsin law, subject to the superintending authority of the State. Nothing herein shall preclude the City from challenging the State's authority.



## **19. CHANGES**

- A. Any substantial change to a condition or requirement outlined in this Conditional Use Permit, including but not limited to noise limits, must be presented to the Director of Community Development and the City Engineer for review. If the Director of Community Development or the City Engineer considers the change significant to the health and welfare of the City, the change must be approved by the Plan Commission. If the Director of Community Development and the City Engineer consider a change to be insignificant to the health and welfare of the City, they may approve the change.
- B. The City and Owner reserve their rights to modify this agreement if any changes are made to the ERGS development plan by the Owner or a regulatory agency.

## **20. NOTIFICATIONS**

- A. Any notifications or notices related to this CUP by the City shall be directed to the Owner's local affairs representative, ERGS plant manager, and OCPP plant manager, or their designees. Any notifications or notices related to this CUP by the Owner shall be directed to the City's Director of Community Development.

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# Exhibit A

## City of Oak Creek Conditional Use Permit for Wisconsin Energy Corp. Power Plant Proposal



### NOTES:

1. Proposed site features provided by WE Power, LLC Draft Site Plan Dated 5/6/03.
2. Site Plan Layout subject to approval by the PSC and the DNR.
3. Other site grading & landfilling will occur in Cedarburg, and is not shown on this Exhibit.

